

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

BCB CHEYENNE, LLC, d/b/a
BISON BLOCKCHAIN, a Wyoming
limited liability company,

DOCKET NO. 23-CV-00079-ABJ
(Pages 1 through 210)

Plaintiff,

vs.

Cheyenne, Wyoming
Wednesday, June 26, 2024
1:33 p.m.

MINEONE WYOMING DATA CENTER, LLC, a Delaware limited liability company; MINEONE PARTNERS, LLC, a Delaware limited liability company; TERRA CRYPTO, INC., a Delaware corporation; BIT ORIGIN LTD., a Cayman Island company; SONICHASH, LLC, a Delaware limited liability company; BITMAIN TECHNOLOGIES HOLDING COMPANY, a Cayman Island company; BITMAIN TECHNOLOGIES GEORGIA LIMITED, a Georgia corporation; and JOHN DOES 1-20, related persons and companies who control or direct some or all of the named Defendants.

Defendants.

TRANSCRIPT OF MOTION HEARING PROCEEDINGS
EMERGENCY MOTION FOR PROTECTIVE ORDER WITH PREJUDGMENT
WRITS OF ATTACHMENT AND GARNISHMENT

**BEFORE THE HONORABLE ALAN B. JOHNSON
UNITED STATES DISTRICT JUDGE**

*MELANIE L. HUMPHREY-SONNTAG, RDR, CRR, CRC
Federal Official Court Reporter
2120 Capitol Avenue, Room 2228, Cheyenne, WY 82001
307.433.2169 * MelanieSonntagCRR@gmail.com*
Proceedings reported with realtime stenography;
transcript produced with computer-aided transcription.

1 APPEARANCES (via Zoom):

2 For the Plaintiff:

PATRICK J. MURPHY
SCOTT C. MURRAY
WILLIAMS, PORTER, DAY & NEVILLE
159 North Wolcott Street, Suite 400
Casper, WY 82601

4 For the Defendants
5 MineOne, Terra
6 Crypto, Bit Origin,
7 and SonicHash:

PAULA COLBATH
DAVID A. FORREST
ALEX INMAN
LEILY LASHKARI
LOEB & LOEB, LLP
345 Park Avenue
New York, NY 10154

8 KARI HARTMAN
9 SEAN M. LARSON
10 HATHAWAY & KUNZ, LLP
11 2515 Warren Avenue, Suite 500
12 Cheyenne, WY 8200111 For the Defendants
12 Bit Origin and
13 SonicHash:
14 MARC S. GOTTLIEB, I
15 ORTOLI ROSENSTADT, LLP
16 366 Madison Avenue, Third Floor
17 New York, NY 1002218 MEGGAN HATHAWAY
19 SUNDALH, POWERS, KAPP & MARTIN, LLC
20 2020 Carey Avenue, Suite 301
21 Cheyenne, WY 8200122 For the Defendants
23 Bitmain Technologies:
24 KHALE J. LENHART
25 HIRST APPLEGATE, LLP
1720 Carey Avenue, Suite 400
Cheyenne, WY 8200126 DANIEL HIRSCH
27 O'MELVENY & MYERS, LLP
28 400 South Hope Street, 18th Floor
29 Los Angeles, CA 90071

23-CV-00079-ABJ

3

1 I N D E X

PAGE

2 Opening Statement by Mr. Murphy 8
 2 Opening Statement by Ms. Colbath 14

3 **PLAINTIFF WITNESSES:**4 **ANDREW ASTUNO**

5 Direct Examination by Mr. Murphy	20
5 Voir Dire Examination by Ms. Colbath	22
6 Direct Examination (Resumed) by Mr. Murphy	24
6 Cross-Examination by Ms. Colbath	31
7 Further Direct Examination by Mr. Murphy	131

7 **MICHAEL MURPHY**

8 Direct Examination by Mr. Murphy	40
9 Cross-Examination by Ms. Colbath	103
9 Redirect Examination by Mr. Murphy	121
10 Recross-Examination by Ms. Colbath	123
10 Further Direct Examination by Mr. Murphy	171

11 **DEFENSE WITNESSES:**12 **ERICK RENGIFO, PhD**

12 Direct Examination by Ms. Colbath	132
13 Cross-Examination by Mr. Murphy	158

14 **MARK ALDRICH**

14 Direct Examination by Ms. Colbath	159
15 Cross-Examination by Mr. Murphy	163

15 Closing Argument by Mr. Murphy 175

16 Closing Argument by Ms. Colbath 186

17 Ruling by the Court 194

18 E X H I B I T S

IDENTIFIED RECEIVED

19 **PLAINTIFF EXHIBITS**

19 8 General Ledger Journal	84	90
20 Entries Chart		
20 9 Related Party Lenders Chart	75	84
21 (demonstrative)		
21 15 DHS Agreement	49	50
22 16 Side Letter	50	51
22 17 Consulting Services Agreement	51	52
23 21 Email Compilation	63	--
23 100 Murphy Testimony Script	68	--

24 **DEFENSE EXHIBITS**

24 47 Email Chain	124	--
-------------------------------------	-----	----

23-CV-00079-ABJ

4

1 (Proceedings commenced 1:33 p.m., June 26, 2024.)

2 THE COURT: I hope I'm seeing everyone on my screen.
3 You're all getting to be about postage stamp size as a result
4 of the growth of this case and the number of individuals who
5 are listed to participate.

The matter that brings this matter to the Court today
is BCB Cheyenne, a limited liability company, doing business
as Bison Blockchain, a Wyoming limited liability company.

9 They have brought this action against MineOne Wyoming
10 Data Center, a Delaware limited liability company; MineOne
11 Partners, LLC, a Delaware limited liability company; Terra
12 Crypto, Incorporated, a Delaware corporation, which is
13 associated with MineOne Partners and a -- a parent creditor;
14 Bit Origin, a limited company from the Cayman Islands;
15 SonicHash, a limited liability company from Delaware; Bitmain
16 Technologies, a Georgia limited liability organization, a
17 corporation; various John Does who control or direct some or
18 all of the named defendants who are members of these various
19 limited liability organizations.

20 The matters that bring this case to our attention is
21 the sale of the assets of the Bitchain organization that had
22 been created in this matter and the alleged allegations of BCB
23 of the fraud and imminent dissipation of those assets.

24 In kind of short form, this case commenced as a
25 result of the good fortune of a young Wyoming limited

1 liability company's ability to obtain a right to a substantial
2 amount of energy that could be applied to Bitchain technology
3 and mining operations, which involve very sophisticated
4 mathematical problems that need to be solved in order to find
5 success as well as tremendous amounts of energy to support
6 those activities. In fact, one of these mining enterprises
7 will consume the energy of a small city.

8 Wyoming is favored in that regard, particularly
9 because of its cool weather, which helps cool the equipment,
10 and its windy conditions, which are also very satisfactory in
11 that regard.

12 BCB, having secured an understanding with Black Hills
13 Energy, then needed an organization with the wherewithal and
14 money, primarily, to create the structures on the ground and
15 to make the arrangement for the mining machines and undertook
16 whatever due diligence they did and located eventually MineOne
17 Partners and its associate Terra Crypto, Incorporated, and the
18 organization of the Wyoming MineOne Data Center was -- was
19 formed with an agreement that the MineOne entities would
20 provide the resources for the building of these things and BCB
21 would provide the wherewithal to navigate the regulatory
22 barriers to the operation and secure appropriate licensing and
23 then -- and on the ground begin its hosting obligation in a
24 sort of an amorphous way in assisting the construction of two
25 mining centers, one located in an area approximately 1 mile

23-CV-00079-ABJ

6

1 from a nuclear missile base under the jurisdiction of the
2 United States Air Force in a business center and another in
3 another business center located some miles away from that
4 Warren Air Force Base location.

5 From the get-go delays occurred. At some point,
6 I suspect early on from the information we've received and the
7 affidavits that have been filed, BCB was aware that
8 substantial Chinese membership existed -- that is, persons
9 having a living in -- in China and acquiring property in
10 Wyoming for the purpose of Bitcoin mining.

11 The location of the business park near Warren Air
12 Force Base, which was to consume the majority of the power to
13 be made available in Black Hills, also is the home of
14 two other significant power-required activities.

15 The first is NOAA's primary computer center, which is
16 a compendium of 70 universities primarily devoted to their
17 studies of climate and the location most recently of a -- a
18 new, more-than-15 petaflop computer located on that site, and
19 the second is a cloud center operated by the private company
20 Microsoft.

21 No application was submitted to the Federal
22 Government as part of this as building progressed, and, so far
23 as the Federal Government's knowledge, there was none until a
24 press release by one of the parties who are involved --
25 perhaps it was -- perhaps that was -- I can't remember --

23-CV-00079-ABJ

7

1 Bitmain Technologies of Georgia -- disclosed what was in place
2 and about to commence operations. And at that point Microsoft
3 became fully informed and informed CFIUS of -- of that
4 activity.

5 As a result, ultimately, the President of the
6 United States, as part of his powers under the separation of
7 powers doctrine and as a nonappealable-to-Federal Court
8 matter, ordered Bitmine [sic] Partners, LLC, and MineOne
9 Wyoming Data Center to divest.

10 They have since arranged a sale, which has taken
11 place. Substantially before that time BCB and its aspiring
12 personnel, hoping to engage in the second part of their
13 understanding and become the hosts, had been pushed to the
14 side, they claim, and all in breach of their contractual
15 understandings in connection with this project.

16 Learning of the sale in this matter, emergency
17 motions have been filed and supplemented and that eventually
18 bring us here today. We've had several hearings.

19 So, to make matters short, another organization
20 has -- is taking over in this mining operation separate and
21 apart from any of those that are before the Court today.

22 It is the desire of BCB to secure its hoped-for pot
23 of gold at the end of the rainbow, to obtain relief under
24 Wyoming statute by way of attachment of property and proceeds
25 of the sale transaction that is taking place in this matter.

1 As I understand it, any financial involvement in this
2 project really was represented by the effort of BCB to secure
3 the available power, which is key to this kind of operation.
4 And, of course, early on in the contractual understanding
5 between the parties, that critical power, however it might be
6 enforced against -- understanding -- against Black Hills was
7 transferred from BCB to the MineOne Partners or the MineOne
8 Wyoming Data Center under the agreement. Some of this may be,
9 certainly, error and an oversimplification on my part.

10 At any rate, a very simple and conclusory affidavit
11 was filed under pertinent Wyoming law in support of the
12 emergency motion in this matter, and, hence, we are here today
13 with a hearing that will be proceeding under a timer.

14 So, Mr. Murphy, the time is yours.

15 MR. MURPHY: May it please the Court, Counsel.

16 Patrick Murphy on behalf of Plaintiff BCB Cheyenne, LLC.

17 If the Court grants these writs of attachment and
18 garnishment of close to 15 1/2 million of CleanSpark purchase
19 monies and close to a million of the Black Hills Energy
20 security fund, a total of \$16,528,276, we'll finally be on a
21 status quo. Finally, we would have a level playing field.

22 These defendants will finally have to come to the
23 settlement table -- they will if the writs are issued -- to
24 negotiate with BCB as to how much of these attached monies it
25 will give BCB for BCB's hard work and value to settle and

23-CV-00079-ABJ

OPENING STATEMENT - MURPHY

9

1 resolve this matter.

2 If the Court does not attach or garnish these
3 CleanSpark purchase monies, the MineOne defendants will pay
4 and enrich themselves and their related parties. They will
5 pay their own lawyers, we will endure eight more brutal months
6 of litigation, a long two-week bench trial in January, then an
7 appeal. And for what? MineOne won't have any money or assets
8 for BCB to collect from when BCB wins a judgment against
9 MineOne and Terra Crypto. Everything BCB has suffered and
10 endured to get to this point will have been futile and a total
11 loss.

12 And, Your Honor, there's nothing extraordinary about
13 prejudgment writs of attachment and garnishment. These
14 prejudgment attachment statutes have been Wyoming law and
15 Wyoming public policy for 150 years, since 1876. BCB proved
16 all the required statutory elements with Michael Murphy's
17 merits affidavit on May 15th and amended emergency motion
18 affidavit on June 24.

19 He testified and will testify as follows: The
20 defendants are indebted to BCB for over 38 million; there are
21 no legal setoffs to this indebtedness. The defendants have
22 not paid any of this debt to BCB. None of this indebtedness
23 is secured by any mortgage or lien upon the MineOne
24 defendants' real or personal property in Wyoming. And MineOne
25 is about to assign, remove, dispose of, or conceal its

1 property with intent to defraud its creditor; namely, BCB.

2 The only loan that has priority over BCB's

3 \$38 million claim is Antalpah's security claim for

4 approximately \$6,903,000.

5 And BCB agrees this secured claim should be paid, but

6 no other claims or alleged loans should be paid with these

7 22,500,000 CleanSpark purchase monies.

8 After paying Antalpah's secured claim, thus allowing

9 free and clear title to pass to CleanSpark as early as

10 tomorrow, the Court should immediately attach all of the

11 remaining 15,529,165 CleanSpark monies and the \$999,111 that

12 Black Hills Energy is holding for MineOne in its security

13 fund.

14 MineOne, Your Honor, anticipatorily repudiated its

15 DHS agreement with BCB on March 13th of '23 when MineOne

16 emailed BCB, telling BCB, quote: "We negotiated with Wiley

17 and his team for them running the complete hosting and

18 management of the site. We have made a simple agreement where

19 we set what your now limited responsibilities are," unquote.

20 It was a takeover.

21 On March 13th of '23, MineOne sent BCB a so-called

22 proposal, a proposed take-it-or-leave-it amendment to the

23 DHS agreement where, one, BCB would not be allowed to operate

24 the North Range or Campstool sites and would not receive the

25 agreed-upon consideration tied to those services, including

1 the compensation for all of BCB's up-front work and the value
2 BCB created with winning the lucrative energy contract from
3 Black Hills Energy.

4 Second, under the proposal BCB would no longer have
5 its right of first refusal or buyout in the event another
6 entity purchases the development.

7 And, third, in return for a much-reduced compensation
8 package, BCB would be minimized from being the site managers
9 with a team of BCB's own 10 to 15 employees to do just menial
10 work, working for MineOne.

11 Jiaming Li, who's not here today, Skyped this message
12 to Erick Rengifo on March 13th of '23, quote, "I just want to
13 get rid of BCB and move to the business."

14 And Erick Rengifo, replying to Jiaming Li, said
15 "I agree. Hopefully, this agreement we will have them" --
16 meaning BCB -- "just marginally and we can do the business,"
17 unquote.

18 MineOne anticipatorily repudiated its DHS agreement
19 on March 13th with its decision to remove BCB as the host and
20 operator at North Range and completely preclude BCB from being
21 involved at Campstool, and MineOne had no cause to breach or
22 repudiate its DHS agreement with BCB.

23 BCB substantially complied with each and every
24 contractual obligation it had to MineOne. BCB's primary
25 contractual obligation was to perform, quote, "all other

1 reasonable related activities within its control," unquote.

2 "Within its control." BCB complied with its obligation to
3 perform reasonable activities within its control.

4 It was Defendant Terra Crypto, not BCB, who had the
5 contractual obligation under its CS agreement to assure
6 completion by the completion date. Terra Crypto breached its
7 obligation to ensure that all tasks were developed in a timely
8 manner. CEGEN and Shermco were MineOne's contractors, not
9 BCB's contractors, and their delays and problems caused this
10 project to be late.

11 Your Honor, MineOne and Terra Crypto have nothing on
12 BCB. Throughout this case MineOne and Terra Crypto have been
13 unable to point to a specific contractual obligation that BCB
14 breached. All they can do is try to hang their breach and
15 their contractor's failures on BCB without any specificity.

16 And BCB's damages are well-established in Patrick
17 Gahan's March 20, 2024, expert report. BCB's damages against
18 MineOne are close to 22 million at the time of trial and close
19 to 42 million against Terra Crypto respectively.

20 Finally, as Michael Murphy will explain today, from
21 the 11,250,000 of Campstool proceeds and MineOne -- that
22 MineOne defendants intend to transfer 4,152,434 from MineOne
23 to Terra Crypto. Terra Crypto is 100 percent Jiaming Li and
24 Erick Rengifo, the same owners and operators of -- you guessed
25 it -- MineOne. They seek to pay themselves.

1 And MineOne says -- by way of the four loan
2 agreements MineOne has only recently -- and that now that --
3 provided -- that MineOne, its investors, and Defendant Terra
4 Crypto and their related parties -- they say they're owed
5 7,820,386 in alleged loans, but all of that money is really
6 just camouflaged equity. It is not genuine, bona fide loans.

7 This is their scheme, to defraud BCB and get away
8 with all the money. Today. Tomorrow. All of these companies
9 are related parties, investors, and/or companies owned and
10 operated by Erick Rengifo, Jiaming Li, and/or Chong Wang.

11 What MineOne is doing is what the pre-judgment
12 attachment statute is intended to avoid. MineOne is about to
13 assign, remove, or dispose of its property with the intent to
14 defraud its largest creditor, BCB, while paying themselves and
15 their related parties.

16 BCB is entitled to writs on the CleanSpark purchase
17 monies because MineOne is, quote, "about to assign, remove, or
18 dispose of its CleanSpark sales money to defraud its
19 creditors," Wyoming Statute 1-15-201.

20 In this context, defrauding one's characters simply
21 means MineOne pays its other related parties and unsecured
22 creditors, quote, "with actual intent to hinder, delay, or
23 dis- -- or defraud any creditor of the debtor," Wyoming
24 Statute 34-14-205.

25 Your Honor, we're about to present the evidence how

23-CV-00079-ABJ

OPENING STATEMENT - COLBATH

14

1 MineOne is about to defraud BCB and get away with all the
2 money. If that happens, this litigation will escalate and
3 expand. But, by issuing the writs, the money will finally be
4 held in a status quo, on a level playing field, and this case
5 will be put on an expedited road to settlement and resolution.

6 Thank you, Judge Johnson.

7 THE COURT: Very well.

8 Did you wish to present your son at this point?

9 MR. MURPHY: I didn't know if you were going to have
10 Ms. Colbath present her opening statement now or if -- I can
11 go -- I can go -- I was going to ask -- actually call Andy
12 Astuno as our first of two witnesses.

13 THE COURT: All right.

14 Ms. Colbath, do you wish to make your presentation
15 now?

16 I think you're muted.

17 MR. GOTTLIEB: Paula, you're on mute.

18 MS. COLBATH: May it please the Court, Paula Colbath
19 for the MineOne defendants.

20 I want to start where Mr. Murphy started. He said to
21 Your Honor that the -- it's important to issue these writs of
22 attachment to maintain the status quo, to create what he
23 called a level playing field.

24 There will be no level playing field if a writ --
25 writ of attachment is issued against the MineOne defendants'

1 money because the fact of the matter is, as things will come
2 out in testimony, BCB has no money.

3 At the end of the day we've continued to litigate,
4 yet they have acknowledged in their reply brief, submitted to
5 you on late Monday night, at page 9, where I quote, "BCB
6 cannot afford to post a bond of more than a few thousand
7 dollars," so there's no level playing field.

8 If a writ is issued, my client's proceeds and money
9 will be frozen until some time after appeals, after next year
10 for some lengthy period of time while BCB, during the project,
11 have no skin in the game, didn't put up a dime for the
12 construction, and has no money now. It's basically imploring
13 you not to require it to post a bond, so they're asking you
14 to -- to utilize what is well known as drastic, extraordinary
15 relief to coerce my clients to sit at a settlement table.

16 That is not the purpose of attachment. Attachment is
17 only granted when there is clear evidence of fraud, secreting
18 of assets, hindering creditors, and there's absolutely no
19 evidence here presented up to this point of any type of
20 conduct like that.

21 Let's look at what the conduct is that Mr. Murphy --
22 which is a moving target. As you know, he filed in May his
23 first emergency motion, then, when that fell flat with our
24 opposition to it, he filed an amended emergency motion
25 alleging new -- new facts, sent Your Honor emails, which I'll

1 talk about, alleging all kinds of hysteria and drama, that we
2 were taking all the assets out of Wyoming. His son took
3 pictures, sent them to the Court. I addressed that and I'll
4 address it again.

5 And, now, as a last resort, in the most recent
6 filings earlier this week, Mr. Murphy has once again changed
7 tack and now says that the loans that were made are, in his --
8 in his conclusion, camouflaged equity. And we will have
9 witnesses address that.

10 The first -- the first evidence Mr. Murphy brought
11 forward was -- in his initial motion -- was Jiaming Li, one of
12 the principals, committed fraud. He used the word "fraud,
13 intentional misrepresentations." He didn't hold back at all,
14 said that there was fraud in connection with the CleanSpark
15 purchase and sale agreement.

16 Well, Mr. Murphy didn't read that purchase and sale
17 agreement closely because the lead-in to the particular
18 provision he relied on said "Except as disclosed on the
19 accompanying disclosure statements, there are no litigations
20 pending." Well, of course. We -- the litigation was
21 disclosed fully on a disclosure schedule, and that -- the
22 evidence of that was provided to Mr. Murphy.

23 That accusation was found in Mr. Michael Murphy's
24 affidavit, despite having received unequivocal evidence that
25 the corporate lawyers who were negotiating that deal provided,

1 in advance of CleanSpark's signature on the purchase and sale
2 agreement, disclosure of the lawsuit. Neither one of them has
3 corrected their misrepresentation with this Court.

4 But the bottom line on their first example of fraud
5 was that they were just absolutely wrong, and -- and then they
6 moved on to sending you pictures. "Look at this. Right
7 before our very eyes" -- this happened on May 17th -- "the
8 MineOne defendants are taking all the assets out of Wyoming.
9 You must stop them."

10 Well, no. Again, they went way out on that limb, and
11 the limb broke because property that was being removed was
12 directed to be removed by the President of the United States,
13 the miners, and those miners were the property of Bitmain, not
14 MineOne. So the second fraud didn't exist.

15 Now that -- they're trying to attack loans that were
16 made into the project, and we will have the principals talk
17 about -- because of the severe delays that were occasioned
18 here that were breaches of the key contract here -- the
19 development, hosting, and service agreement signed by the
20 MineOne defendants and BCB in June of 2022, the -- the
21 deadlines were not met; the vendors were not supervised; the
22 permits were not obtained. And you will hear evidence of
23 multiple breaches.

24 And Mr. Murphy gave you a very important date in his
25 opening, March 13th, 2023. That's when he says that my

23-CV-00079-ABJ

OPENING STATEMENT - COLBATH

18

1 clients breached the development, hosting, and service
2 agreement, March 13th, 2023.

3 Well, by the end of the hearing, you will learn that
4 there were multiple repeated breaches by BCB of that same
5 contract starting as early as October 31st, 2022.

6 If the Court grants the writ of attachment, it would
7 actually -- one of the provisions of the statute, 1-15-201(b),
8 is that the writ did not hinder payment of creditors, and,
9 here, Mr. Murphy just turns a blind eye to the fact that the
10 MineOne defendants have multiple current creditors that are
11 owed money.

12 They -- they -- they have a secured lender, Antalpa,
13 upwards of \$7 million. Clean, insurable title cannot be
14 conveyed to CleanSpark unless that loan is paid in full to the
15 satisfaction of Antalpa.

16 Because this project had serious overruns, you'll
17 hear today that BCB prepared, with my client, a construction
18 budget for this project of \$18 million. By the time this
19 project was completed, the costs had escalated to over
20 \$27 million.

21 I've just -- I'm going to move on a little quickly.

22 You're going to hear about numerous breaches from --
23 BCB failed to meet the October 31, '22, date; they failed to
24 secure the necessary approvals; they failed to adhere to
25 approved budgets; they didn't effectively manage the vendors.

23-CV-00079-ABJ

OPENING STATEMENT - COLBATH

19

1 And you're also going to hear, Your Honor,
2 importantly, how every penny of the proceeds from CleanSpark
3 is going to be used.

4 There's no absconding with money. There are no
5 winners here. There was upwards of \$30 million put into this
6 facility. None by BCB. All by lenders and others. And there
7 are vendors, there are lenders, there are service providers
8 that are owed money.

9 And in order for my clients to comply with the
10 Presidential order -- which requires everything to be stripped
11 off of the land from the underground wires, transformers, the
12 modular data centers right down to foundations -- that alone
13 is estimated to cost 2.6 million. So if there is a writ
14 attaching all of the proceeds, there will be lawsuits because
15 MineOne owes people money today. They're not contingent
16 liabilities, which is all BCB is. They are actual, current
17 creditors owed money.

18 Finally, Your Honor, if -- if the Court were
19 inclined, at the end of the day, to -- to issue any type of
20 writ, we would implore the Court to require a substantial bond
21 in whatever the amount is of the money that will be tied up
22 since MineOne will not have use of that money and will likely
23 face lawsuits as a result of owing people money that's
24 currently due and creditors that stand well in front of BCB.

25 So with that, Your Honor, I would yield to Mr. Murphy

23-CV-00079-ABJ

ASTUNO - DIRECT - MURPHY

20

1 for his first witness.

2 THE COURT: Thank you, Ms. Colbath.

3 Mr. Murphy.

4 MR. MURPHY: Yes, sir. Thank you, Your Honor.

5 We would call Andrew Astuno.

6 Andrew, are you there?

7 THE WITNESS: Yes. Good afternoon.

8 MR. MURPHY: Good afternoon.

9 THE COURT: Please raise your right hand and be
10 sworn.

11 THE COURTRoom DEPUTY: Good afternoon.

12 (Witness sworn.)

13 THE WITNESS: I do.

14 **ANDREW ASTUNO, PLAINTIFF'S WITNESS, DIRECT EXAMINATION**
15 **BY MR. MURPHY:**

16 Q. What is your name?

17 A. Andrew Astuno.

18 Q. And where do you live?

19 A. Washington, DC.

20 Q. Where and when did you graduate from law school?

21 A. I graduated from the University of Denver Sturm College of
22 Law in 2011.

23 Q. In which state or states are you admitted to practice?

24 A. Colorado as of 2011 and the District of Columbia as of
25 2018.

1 Q. Have you been a practicing attorney since graduating from
2 DU Law School?

3 A. Yes, I have.

4 Q. Did I reach out to you on June 1st, 2024, to tell you of
5 this BCB versus MineOne lawsuit and ask whether you had
6 experience and expertise working with CFIUS?

7 A. Yes, you did.

8 Q. Can you share with the Court your experience and expertise
9 working with CFIUS?

10 A. Most notably, as of 2020 I joined the Treasury Department,
11 where I exclusively worked on CFIUS matters in the review of
12 proposed foreign transactions.

13 I, in that role, was overseeing the review of both
14 debt and equity transactions that fell under CFIUS' review
15 authorities. I also consulted with various agencies in the
16 collaborative interagency process that represents CFIUS and
17 coordinated several actions, including the negotiation of
18 national security agreements as certain cases required.

19 Following that experience I returned to private
20 practice, where, since then, I have been an international
21 trade regulatory attorney, where I've also continued to
22 evaluate a number of CFIUS matters. I continue to specialize
23 in CFIUS matters in my private practice, including
24 representing foreign investors as they seek to enter
25 US markets as well as representing US businesses with

23-CV-00079-ABJ

ASTUNO - VOIR DIRE - COLBATH

22

1 sensitive technologies that could be subject to the CFIUS
2 mandatory filing rules.

3 Q. Do you consider yourself an expert with respect to CFIUS
4 and, in particular, with respect to its reviewal process and
5 approval of covered transactions?

6 A. Yes, I do.

7 MR. MURPHY: Your Honor, at this time I'd ask that
8 the Court qualify Mr. Astuno as an expert in this limited
9 area.

10 MS. COLBATH: Your Honor, could I do a little bit of
11 voir dire?

12 THE COURT: Certainly.

13 MR. MURPHY: On her time, I hope.

14 THE COURT: Yep.

15 **VOIR DIRE EXAMINATION**

16 **BY MS. COLBATH:**

17 Q. Mr. Astuno, have you ever been qualified by any State,
18 Federal Court, or administrative agency as an expert prior to
19 today?

20 A. Yes, but not in this particular field.

21 Q. Okay. My -- let me focus the question on CFIUS.

22 Have you ever been qualified by a State or Federal
23 Court or administrative agency in the area of CFIUS
24 regulations?

25 A. No. I have not been retained until this matter.

23-CV-00079-ABJ

ASTUNO - VOIR DIRE - COLBATH

23

1 Q. Have you ever published a peer-reviewed article on a CFIUS
2 subject?

3 A. I've been quoted in multiple articles pertaining to CFIUS
4 matters, and I've prepared numerous firm publications
5 pertaining to various updates concerning CFIUS' regulatory
6 updates.

7 Q. On those articles were you listed as the author?

8 A. Yes. In terms of articles, I'm referring to client alerts
9 and firm briefings. I'm also including that when you say --
10 when you use the term "articles."

11 Q. And were you listed, Andrew J. Astuno, as the author of
12 those articles?

13 A. Yes. Again, we're -- several client alerts and firm
14 updates. I was listed many times.

15 Q. Okay.

16 What investigation did you do here which informed
17 your opinion?

18 A. I reviewed the -- the underlying pleadings in this matter;
19 in particular, the allegation that MineOne made that, pursuant
20 to the DHS agreement, BCB was required to obtain CFIUS
21 approval as part of its requirement to obtain regulatory
22 approvals.

23 I assessed the nature of the assets and whether the
24 pertinent transaction that is the one involving Cheyenne LEADS
25 and MineOne would have been a covered transaction,

1 specifically a covered real estate transaction, pursuant to
2 Part 802 of the regulations. And I also considered and
3 evaluated the pertinent transaction against the mandatory
4 filing rules outlined at Part 800.401.

5 MS. COLBATH: Your Honor, I don't think he qualifies
6 as an expert. And -- and I think his -- if -- the PowerPoint
7 that he prepared is limited to conclusions of law. But in an
8 effort to move the proceeding ahead, I won't object.

9 THE COURT: Very well.

10 Proceed, Mr. Murphy.

11 MR. MURPHY: Thank you, Judge Johnson.

12 **DIRECT EXAMINATION (Resumed)**

13 **BY MR. MURPHY:**

14 Q. Mr. Astuno, were you aware of President Biden's May 13,
15 2024, order of divestment and did you review it before
16 I called you?

17 A. Yes, I did.

18 This executive order represented a very significant
19 newsworthy event across the greater international trade
20 regulatory community. As soon as the order was issued, my
21 colleagues and I immediately read it and reviewed it.

22 Q. Can you briefly explain at a procedural level what would
23 have led to this Presidential divestment order?

24 A. Yes.

25 As outlined in the scope of the regulations of

1 Part 800, before a President will intervene as it relates to a
2 CFIUS blocking or a divestment order in this case, the
3 committee itself, the inner agency, will first have reviewed
4 it and undergone a national security risk assessment.

5 So, prior to President Biden's intervention, the
6 inner agency would have -- just like I said -- have conducted
7 a full review and assessment and referred or recommended to
8 the President that this divestment occur.

9 The process is rather elaborate. It includes
10 involvement with heads of agencies -- nine agencies, in fact.
11 And, given the -- the nature of the assets and the proximity,
12 the real estate proximity issues, it's -- it appears that, in
13 this case, Pentagon officials and DOD officials were heavily
14 involved in, ultimately, that referral process.

15 I finally would mention that a divestment order is
16 historic in nature. It's very rare. It's deemed to be an
17 extremely rare and extreme remedy. There's only been eight
18 divestment orders since CFIUS was first created under the
19 President Nixon administration.

20 Q. When I contacted you, did I tell you I represent
21 BCB Cheyenne in a lawsuit BCB brought against the MineOne
22 entities who are the subject of President Biden's divestment
23 order on the North Range parcel?

24 A. Yes. That is what you explained.

25 Q. Did I share with you that the MineOne parties have filed

23-CV-00079-ABJ

ASTUNO - DIRECT - MURPHY

26

1 counterclaims against BCB?

2 A. Yes. And just like I explained to your opposing counsel,
3 that's also what I reviewed.

4 Q. Okay. Specifically did I share with you that the MineOne
5 parties in the last 30 days are making the new allegation
6 that, quote, "BCB is the entity that was required to obtain
7 approval from CFIUS before MineOne Data was permitted to
8 acquire the North Range facility"?

9 A. Yes. I -- you explained that and I also confirmed that in
10 my review of the pertinent pleadings.

11 Q. Did I share with you that the MineOne defendants are now
12 alleging as follows, quote, "As project manager BCB was
13 contractually responsible for obtaining all permits and
14 licenses"?

15 A. Yes, you did, and I confirmed that in my review of
16 Article I, Section 6, of the DHS agreement.

17 Q. In your review did you also notice that there was nothing
18 said in that contractual provision about obtaining CFIUS
19 approval?

20 A. That's correct. I did -- I did confirm as much.

21 Q. Yet did I also share with you that the MineOne defendants
22 allege that that contract provision includes obtaining
23 approval from CFIUS even though it doesn't say that?

24 A. Yes. And I -- I've also reviewed that -- that issue on --
25 on multiple grounds, that's correct.

1 Q. Did I ask you whether you had the experience and the
2 expertise with CFIUS during your employment there to know
3 whether or not MineOne's allegation was accurate or not?

4 A. Yes, you did.

5 Q. Do you have the experience and the expertise with CFIUS to
6 know whether it was BCB or the MineOne parties and/or their
7 counsel who had the standing and the ability at the front end
8 of the real estate transaction in June of '22 to report this
9 transaction to CFIUS and seek CFIUS' approval?

10 A. Given my extensive experience in this field, particularly
11 when I was working internally, inside the Treasury Department,
12 which serves as the chair of CFIUS, yes, I do believe I have
13 sufficient experience, knowledge, and expertise.

14 Q. Would CFIUS have received or processed any notification
15 from BCB about this North Range real estate transaction?

16 A. No. And the reason why is because normally a party to a
17 transaction, as that term -- it's a term that has a specific
18 meaning under the pertinent regulations. Only a party to a
19 transaction may notify CFIUS.

20 In other words, only a party to a transaction has the
21 equivalent of what I would refer to as regulatory standing to
22 notify CFIUS and for CFIUS to then properly assess that
23 application. Even if BCB agreed or contractually agreed
24 through some mechanism to notify CFIUS on behalf of MineOne,
25 CFIUS would have rejected such filing.

1 Q. Thank you, Mr. Astuno. Let me switch gears just slightly.

2 Are you aware of the loan agreements, the alleged
3 loans between MineOne and the various -- and its various
4 investors and related parties made in March and April of
5 this year, 2024?

6 A. From what I read and analyzed, yes, I am.

7 Q. Did I send these loan agreement documents to you and
8 including the site-clearing bid -- not an invoice but the
9 site-clearing bid -- after BCB received these documents on
10 June 19th of '24?

11 MS. COLBATH: Your Honor, I'm going to object. There
12 was a -- a PowerPoint setting forth an opinion -- and that
13 PowerPoint is Exhibit 1, which we have objections to --
14 includes nothing to do with any loans and is beyond the scope
15 of what Mr. Astuno has said his expertise is.

16 MR. MURPHY: We're not seeking to introduce the
17 PowerPoint slides, Your Honor. We're trying to just move it
18 along quickly.

19 I've got three more questions for the witness. It's
20 just about his review of these loans and CFIUS' continued
21 interest in them.

22 MS. COLBATH: You didn't introduce him as a lending
23 expert. You introduced him -- and -- and asked your questions
24 and qualified him -- as solely a CFIUS expert.

25 MR. MURPHY: He's solely -- he's testifying solely as

23-CV-00079-ABJ

ASTUNO - DIRECT - MURPHY

29

1 a CFIUS expert. He is not testifying as a loan expert. He's
2 testifying in this respect with regard to the oversight and
3 interest CFIUS would have in these loans and that's all.

4 MS. COLBATH: Well --

5 THE COURT: Limited to only CFIUS regulation or law,
6 he may testify.

7 MS. COLBATH: Thank you.

8 MR. MURPHY: Thank you.

9 BY MR. MURPHY:

10 Q. Mr. Astuno, do these loan agreements, these alleged loans,
11 equal approximately \$7.8 million in proposed money transfers
12 by MineOne to others?

13 A. Yes, they do.

14 MS. COLBATH: Objection, Your Honor. There's no
15 relationship to CFIUS.

16 MR. MURPHY: Let -- that is a -- just a preliminary,
17 foundational question for my last two questions.

18 THE COURT: Proceed.

19 BY MR. MURPHY:

20 Q. Based on all of your experience working for CFIUS, what
21 will likely happen with CFIUS if these loan agreement
22 transactions go through and there is no writ of attachment and
23 garnishment issued by this Court?

24 MS. COLBATH: Again, objection for the record.

25 THE COURT: You may object.

1 Proceed.

2 A. To that question I -- I would again say, given the rather
3 extreme circumstances underlying the recent divestment
4 order -- again, there's only been eight divestment orders in
5 the entire history of CFIUS -- it is fair to assume that any
6 future US business dealings conducted by MineOne and its
7 affiliate entities, the same entities that are parties to the
8 relevant loan agreements that I reviewed, will be subject to
9 heightened and ongoing scrutiny by CFIUS; namely, the same
10 Pentagon components, including the US Air Force, that recently
11 reviewed and took a very keen and strong interest in the
12 recent acquisition in proximity to the Warren Air Force Base.

13 BY MR. MURPHY:

14 Q. Finally, if these funds are placed into escrow, would
15 the terms of the divestment order still be fulfilled and
16 adhered to?

17 A. Yes. So long as the relevant interests are transferred --
18 in other words, if MineOne divests itself of its former
19 assets -- the terms of the divestment order will be fully
20 satisfied, including if and when the sales proceeds are
21 attached by writ.

22 To be clear, the issuance of a writ of attachment in
23 this matter would not conflict with MineOne's potential
24 adherence to the terms of the divestment order, nor would
25 CFIUS object or become involved if such action was taken.

23-CV-00079-ABJ

ASTUNO - CROSS - COLBATH

31

1 MR. MURPHY: Nothing further, Your Honor.

2 **CROSS-EXAMINATION**

3 **BY MS. COLBATH:**

4 Q. Mr. Astuno, am I correct that you attended the Notre Dame
5 University?

6 A. That's correct.

7 Q. And you graduated from Notre Dame in what year?

8 A. 2007.

9 Q. Okay. And you were classmates with Mr. Sean Murphy;
10 correct? Mr. Patrick Murphy's son.

11 A. I didn't know that at the time. But years later, through
12 some certain mutual contacts in the legal community, I did --
13 I did realize that fact. It's a small world.

14 Q. Weren't you roommates at one point in time with
15 Mr. Murphy?

16 In Denver?

17 A. That is correct.

18 Q. Now, you were at CFIUS for less than a year and a half;
19 correct?

20 A. I believe it was approximately 18 months, maybe a bit -- a
21 bit longer.

22 Q. According to your résumé -- and I could show it to you but
23 let me try to refresh your recollection -- that it states that
24 you joined CFIUS in July of 2020, the beginning of the
25 pandemic, and you were there through January 2022.

23-CV-00079-ABJ

ASTUNO - CROSS - COLBATH

32

1 Would that be -- does that refresh your recollection
2 how long you were with CFIUS?

3 A. Yeah. As I -- as I just said, approximately 18 months, so
4 I believe that -- that is correct. I believe that's
5 consistent with what --

6 Q. And when -- when you joined CFIUS in July of 2020, were
7 you working in person or remotely?

8 A. It was both. I -- a hybrid situation.

9 Q. Now, are you currently employed?

10 A. Yes.

11 Q. And you're employed by Clifford Chance?

12 A. That's correct.

13 Q. And you're on a leave of absence right now; correct?

14 A. I'm transitioning my files and I'm -- I'm soon going to be
15 leaving and joining another firm, that's right.

16 Q. Yet you're on a leave of absence right now; correct? Yes
17 or no.

18 A. I -- whatever the operative terminology is, I -- I am --
19 like I said, I'm transitioning and I'm -- I'm soon leaving
20 this firm, my current employer.

21 Q. Do you know a gentleman at Clifford Chance by the name of
22 Thomas Schulte?

23 A. I do.

24 Q. And who do you understand Mr. Schulte to be?

25 A. He is the firm's general counsel.

23-CV-00079-ABJ

ASTUNO - CROSS - COLBATH

33

1 MS. COLBATH: And why don't we post, so the witness
2 can review, Tab 15.

3 BY MS. COLBATH:

4 Q. Once we post that, the question to you, sir, is going to
5 be -- at the end of the second paragraph, Mr. Schulte advises
6 my colleague Alex Inman that you are currently on a leave of
7 absence, is how he described it.

8 Is -- looking at this letter, is that accurate?

9 MR. MURPHY: Objection. That letter has not been
10 produced to us. First time I've seen it is on the screen.
11 That shouldn't happen.

12 MS. COLBATH: Well, it came in yesterday. And
13 I would note for the record that some time ago you received
14 over a hundred pages from Republic Title. And until I saw a
15 reference on Monday night, I hadn't received those subpoenaed
16 documents.

17 So this came late yesterday and you're seeing it now.
18 It's short enough. If you need a minute, I'll afford you
19 some time to review it.

20 MR. MURPHY: I object.

21 BY MS. COLBATH:

22 Q. But the -- Mr. Astuno, you're on a leave of absence from
23 Clifford Chance, aren't you?

24 A. Again, I'm -- whatever the -- the operative terminology
25 is. I -- I stand by what I -- what I said.

1 I am -- it's well -- it's clear to the world -- I'm
2 telling you now, this Court -- that I'm leaving Clifford
3 Chance and I'm going to join another firm in a matter of just
4 2 1/2 weeks.

5 If Mr. Schulte says I'm on a leave of absence, then
6 that's fine. I'm fine with that terminology.

7 I -- I don't know what else to say. I'm -- I'm
8 transitioning. I'm leaving one firm and going to another.

9 To continue to work -- by the way, I will continue to
10 work in the field of CFIUS, to be clear.

11 Q. Now, I think you stated that you're familiar with the
12 terms of the development, hosting, and services contract.

13 A. Certainly, with respect to Section 6 or the operative term
14 that pertains to the -- to seeking regulatory approval, I am
15 familiar with those terms.

16 Q. And -- and that provision was 6.2(b) concerning the
17 permits; correct?

18 A. That -- that sounds right. I would -- would appreciate
19 the opportunity to have that pulled up if -- if you don't
20 mind, but that does sound correct.

21 Q. I do because you testified on direct without it, about
22 that particular provision, and we're under some time
23 constraints.

24 A. Well, from memory -- it was from memory. I don't know if
25 it was subsection (b) or not because I do remember --

23-CV-00079-ABJ

ASTUNO - CROSS - COLBATH

35

1 I believe it was subsection 6.

2 Q. Okay. And you testified that that particular provision
3 did not reference CFIUS, the Committee on Foreign Investment
4 in the US; correct?

5 A. That's correct.

6 Q. And isn't that true because paragraph 6.2(b) that required
7 BCB to obtain all approvals and permits actually says that
8 they were responsible for obtaining, quote, "all," closed
9 quote, so there was no need to identify CFIUS? Correct?

10 A. Well, I would disagree with that because I read that to
11 include all of what is possible to be obtained.

12 There's no way BCB could have obtained CFIUS approval
13 because BCB was not a party to a covered transaction. So
14 it -- if BCB lacked regulatory standing, it had no ability to,
15 again, obtain CFIUS approval.

16 Q. Okay. Mr. Astuno, you've spent a significant amount of
17 time in your career preparing voluntary notices and other
18 documents that get submitted to CFIUS; correct?

19 A. Yes. You can -- that's correct.

20 Q. And those documents get submitted on behalf of the parties
21 to a transaction, be it a real estate or technology or other
22 type of transaction; correct?

23 A. The parties themselves are the filing parties. Their --
24 their representatives are the ones that are preparing,
25 oftentimes, the submissions, but the -- the submitting party

23-CV-00079-ABJ

ASTUNO - CROSS - COLBATH

36

1 is the -- the transaction party itself.

2 Q. Understood.

3 A. The covered --

4 Q. So -- so BCB certainly could have advised the MineOne
5 parties that a CFIUS filing was recommended and advisable;
6 correct?

7 A. I -- I suppose, in theory, if -- if BCB was aware of the
8 particular CFIUS regulations in this instance and had
9 conducted a risk-based assessment, then it could have issued a
10 recommendation.

11 There was not a mandatory filing obligation, however,
12 in this instance because Part 802 -- that does refer to the
13 real estate regulations. The real estate regulations do not
14 contain any mandatory filing obligations.

15 Q. So -- so in your work on this matter, is it your expert
16 opinion that there was no covered transaction here?

17 A. No. That's -- that's not my opinion at all. The -- it --
18 CFIUS would not have reviewed this matter if there wasn't a
19 covered transaction. President Biden would not have had the
20 legal ability to issue an executive order if this transaction
21 was not covered; i.e., was under the jurisdictional
22 authorities of the committee.

23 This transaction was covered pursuant to Part 802, in
24 that it was a covered real estate transaction based on the
25 proximity of the relevant assets to a Part 1 sensitive site

23-CV-00079-ABJ

ASTUNO - CROSS - COLBATH

37

1 listed at Annex A thereto.

2 If you open up the real estate regulations of
3 Part 802, you will see that the Warren Air Force Base is
4 identified. That creates what's called proximity jurisdiction
5 under Part 802; however, that does not mean there was a
6 mandatory filing obligation. A mandatory filing obligation
7 comes up in a different context. Those factors were not met
8 here.

9 Q. If -- if you had represented the MineOne parties at the
10 time and were aware that they had Chinese nationals in their
11 ownership and management structure, would you have recommended
12 to them to make a CFIUS filing?

13 A. It's an interesting question. I -- I would have wanted
14 to -- I certainly would have conducted a risk-based analysis.
15 I would have had a number of questions. I would have wanted
16 to ascertain whether there was proximity jurisdiction.

17 And, ultimately, it's -- it's only a recommendation
18 that an attorney can give, as -- as you can surely understand.
19 But there is a possibility that I -- I will say, based on what
20 I've seen, there is a distinct possibility that, yes, I would
21 have advised, at the very least, a real estate notice, a
22 short-form real estate notice.

23 Q. And you're familiar with the CFIUS online map that
24 identifies restricted areas; correct?

25 A. That -- you're referring to the mapping tool that -- yes.

23-CV-00079-ABJ

ASTUNO - CROSS - COLBATH

38

1 That -- that is used to identify whether there's proximity
2 jurisdiction. That's right.

3 That's -- that online tool identifies all Part 1 and
4 Part 2 sites and even what's called Part 3 sites that don't
5 necessarily create jurisdiction but are otherwise deemed to be
6 sensitive sites.

7 Q. And -- and that is a publicly available tool; correct?

8 A. That is -- that is correct. It is -- I will say -- rather
9 esoteric, if I may say. It's a little bit unique in that it
10 takes a specialized skill set to understand and correctly
11 navigate and use.

12 But it is publicly available, that is right.

13 Q. And did you have occasion to type in the coordinates for
14 the Campstool site to determine whether that was in a
15 restricted area?

16 A. I believe that was -- that was not there. There was not
17 jurisdiction for -- for Campstool. I believe the divestment
18 order and the CFIUS review only pertain to the North Range
19 parcel.

20 Q. My question is a little different.

21 Did you ever determine whether Campstool --
22 independent of the Presidential order -- whether Campstool is
23 in a restricted area?

24 A. I did not conduct a real estate analysis in this matter.
25 It -- given that the transaction's already closed, that CFIUS

23-CV-00079-ABJ

ASTUNO - CROSS - COLBATH

39

1 has already reviewed it, the President's already issued an
2 executive order, I felt there was no need whatsoever for me to
3 go back and conduct a real estate proximity analysis.

4 But I can tell you it's abundantly clear that there
5 is no proximity, there's no real estate jurisdiction to the
6 Campstool property.

7 Q. Are you familiar with the CFIUS case management system
8 public portal?

9 A. Yes, I am. In fact, I was one of the consultants that
10 offered advice on how to build it out and to improve its
11 interface as of 2020.

12 Q. And you have to register to use it; correct?

13 A. Correct.

14 Q. And the public portal allows external users to submit
15 filings and interact with CFIUS; correct?

16 A. If they first establish a -- an account. It's a rather
17 elaborate process to establish an account. But I -- yes,
18 that's correct. Once you have an account, you're able to --
19 to make submissions.

20 Q. So, for instance, when you were representing clients and
21 making disclosures on their behalf to CFIUS, you could access
22 the portal and the documents that were filed?

23 A. That's right.

24 Q. Access is not limited to just owners or transaction
25 parties; correct?

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

40

1 A. That's correct.

2 MS. COLBATH: I have no further questions.

3 THE COURT: Thank you.

4 MR. MURPHY: Nothing further for this witness,
5 Your Honor.

6 And I would ask that he be excused from his subpoena.

7 THE COURT: Mr. Astuno, you are excused from the
8 subpoena that has produced you on my screen.

9 THE WITNESS: Thank you, Your Honor.

10 MR. MURPHY: I think, Mr. Astuno, you can stay and
11 listen or you can go. I think that's the gist of that.

12 Your Honor, I would call Michael Murphy to testify.

13 THE COURT: Mr. Murphy, please raise your right hand
14 and be sworn.

15 (Witness sworn.)

16 THE WITNESS: I do.

17 **MICHAEL MURPHY, PLAINTIFF'S WITNESS, DIRECT EXAMINATION**

18 **BY MR. MURPHY:**

19 Q. What is your name, please?

20 A. Michael Murphy.

21 Q. Do you have personal knowledge of the matters you're
22 testifying to today?

23 A. Yes, I do.

24 Q. How are you connected with Plaintiff BCB Cheyenne, LLC,
25 d/b/a Bison Blockchain?

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

41

1 A. I'm one of three founding members of BCB, a team which
2 includes about a dozen individuals, including Cheyenne locals.
3 We all lost our jobs and livelihoods when the defendants
4 breached our agreement with them.

5 This has been an incredibly painful experience for
6 all of us at BCB, especially for our team members with
7 families and young children. We deserve to be compensated for
8 the good and hard work we did and the tremendous value that we
9 created.

10 Q. How deep into this are you?

11 A. I'm about as deep as anyone can be. I'm all in
12 financially, having invested most of my life savings. I'm
13 all in emotionally and mentally, as well, for the past
14 three years.

15 This project and now this lawsuit has affected every
16 facet of my life, and now all of this -- everything from the
17 last three years -- is on the line today for me, BCB's team
18 members, and our families.

19 MS. COLBATH: Your Honor, may I interrupt.

20 Mr. Murphy appears to be reading from something.
21 I -- I would ask that he not have any scripts or -- or answers
22 and that he answers his counsel's questions without the aid of
23 something that we can't all see.

24 MR. MURPHY: That's inappropriate. He's answering
25 the question. It's -- it's clear. And if he has some notes

1 with which he needs to remember some of the details in this
2 insanely complex matter, he's entitled to use those,
3 Your Honor.

4 MS. COLBATH: I would ask that they be marked at the
5 appropriate time, then, because he's clearly reading a script.

6 THE COURT: That would be fair. It will be marked
7 and provided to you later.

8 BY MR. MURPHY:

9 Q. Have you provided any affidavits to the Court in this
10 lawsuit?

11 A. Yes. I provided three affidavits.

12 Q. Can you describe your three affidavits from a high-level
13 view?

14 A. Yes.

15 The merits affidavit identifies evidence which shows,
16 number one, BCB's substantial likelihood of success on its
17 breach of contract claims against MineOne and Terra;
18 number two, BCB's substantial likelihood of success defending
19 against MineOne's and Terra's frivolous counterclaims against
20 BCB. I should note it's 37 pages and references hundreds of
21 Bates-stamped documents as evidence of my assertions.

22 And then there's the Campstool affidavit, which
23 supports the expert report of Patrick Gahan, BCB's damages
24 expert. The affidavit documents evidence of all the work BCB
25 did on the Campstool location, both before the DHS agreement

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

43

1 with MineOne and during the DHS agreement with MineOne.

2 And I should note that it's over 140 pages, single-
3 spaced, with hundreds of citations of actual emails as
4 evidence to my assertions.

5 And then, lastly, I have an amended emergency motion
6 affidavit, which documents the wild ride of the past 50 days
7 in this lawsuit.

8 It addresses the MineOne-CleanSpark purchase
9 agreement. It provides an abbreviated overview of several
10 important filings and representations in this case.

11 And, most importantly, it provides the affidavit
12 testimony required by the Wyoming statute required for the
13 granting of a writ, including but not limited to a detailed
14 analysis of how MineOne and its alleged tenders are related
15 parties and how MineOne has devised and is about to implement
16 a scheme to assign, remove, dispose of, or conceal its
17 property with the intent to defraud BCB and that scheme is
18 likely to be carried out as early as tomorrow, based upon the
19 assertions from defendants, if this Court does not intervene.

20 THE COURT REPORTER: He needs to --

21 (Reporter seeks clarification.)

22 BY MR. MURPHY:

23 Q. Is the testimony in your three affidavits true and
24 correct?

25 A. Yes. Everything is true in my affidavits.

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

44

1 THE COURT: All right.

2 BY MR. MURPHY:

3 Q. Do you intend for the --

4 THE COURT: He will need to --

5 BY MR. MURPHY:

6 Q. Do you --

7 THE COURT: -- slow down so the reporter can get all
8 that he's reading on the record.

9 MR. MURPHY: Well said.

10 Well said. Thank you, Judge.

11 BY MR. MURPHY:

12 Q. Is the testimony in your three affidavits true and
13 correct?

14 A. Yes. Everything is true in my affidavits.

15 Q. Do you intend for the Court, all counsel, and all parties
16 to rely on your affidavit testimony?

17 A. Yes, I do.

18 Q. Do you incorporate your affidavit testimony into your
19 testimony today without repeating or restating everything
20 you've said in your affidavits?

21 A. Yes, I do.

22 Q. Tell us, how did BCB come to be involved in this Cheyenne,
23 Wyoming, Bitcoin data center project?

24 A. In the summer of 2021 the BCB team started researching
25 opportunities to build an enterprise, Bitcoin mining data

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

45

1 center, in and around Cheyenne or in and around Wyoming, given
2 my family roots in the state.

3 And to build a Bitcoin mining data center, as was
4 noted earlier, you need a lot of power. And one of the
5 opportunities we identified where we could procure a lot of
6 power was with Black Hills corporation in Cheyenne. Black
7 Hills issued a request for proposal for companies to submit
8 their plans for Black Hills' available power.

9 Over 15 companies submitted proposals, and,
10 ultimately, BCB won the RFP and then negotiated a power
11 agreement with Black Hills, which was effective on February 22
12 of 2022. And that was for 75 megawatts of power across two
13 locations in and around Cheyenne, 45 megawatts at North Range
14 and 30 megawatts at Campstool. We also had power expansion
15 possibilities at both sites.

16 I think, to get a general sense of the magnitude of
17 this BCIS agreement, it represented at least \$150 million of
18 revenue to Black Hills over the five-year term of the
19 agreement based upon the 75 megawatts. Identifying --
20 identifying this opportunity with Black Hills, winning this
21 RFP, and negotiating the contracts with Black Hills -- which
22 was the first of its kind with Black Hills -- was extremely
23 difficult and time-consuming work.

24 Q. What else did the BCB team do to develop the Bitcoin data
25 center project in Cheyenne?

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

46

1 A. Tremendous, tremendous amount of additional work.

2 And all of that is evidenced in my merits affidavit.

3 Q. When did BCB make its initial contact with Rengifo and
4 Dr. Jiaming Li and in what context was that contact made?

5 A. BCB made contact with Rengifo and Li in March of 2022 in
6 the hopes that one or several of their entities would help
7 finance the project.

8 Q. Did Rengifo and Li want to finance the project for BCB?

9 A. Only -- only if they owned and controlled the project.

10 So, given that, BCB made a proposal for Rengifo and Li to --
11 to -- to buy us out.

12 Q. And how much did BCB ask to be compensated by Rengifo
13 and Li?

14 A. We asked for an up-front payment of \$8.8 million,
15 approximately, which was based on 5 percent of the estimated
16 value of the power contract. We also indicated we would be
17 willing to finance a purchase over the five-year BCIS contract
18 term in return for 10 percent of -- approximately 10 percent
19 of the value of the contract, which was \$17.6 million.

20 Q. Did BCB discuss any other possible arrangements with
21 Rengifo and Li?

22 A. Yes. We mentioned to them that we were interested in
23 learning the Bitcoin mining business and the hosting business
24 and we would consider other arrangements if it allowed an
25 opportunity for us to stay involved in the project.

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

47

1 Q. And how did Rengifo and Li respond to BCB's proposals?

2 A. They responded by proposing a deal in which BCB would
3 defer payment for its up-front development work, including the
4 BCIS agreement, to Phase 2 of the project, as that would help
5 MineOne get up and running. Rengifo and Li also promised to
6 provide expert consulting to BCB.

7 And I just want to note when -- when Ms. Colbath
8 makes the claims that BCB never put a dime into this or didn't
9 invest into the project, we invested years of our lives into
10 this project for no compensation. And I also would just point
11 out that we -- we still have outstanding invoices to MineOne
12 right now. That -- that is money that we put in.

13 And we also invested a lot of the money that MineOne
14 paid to us, a total of -- MineOne paid \$450,000 in Phase 1.
15 We put a lot of that money into the project by paying for
16 BCB's employees.

17 So I just want to say that we put a lot into this
18 project.

19 Q. Well, what happened next?

20 A. I -- I then played a -- a role in finalizing a deal
21 between BCB and several entities owned, managed, and
22 affiliated with Rengifo and Li, such that the Rengifo-Li
23 entities would finance, own, and control the entire project.

24 And to finalize that deal I was involved with,
25 number one, negotiating a more favorable BCIS agreement with

1 Black Hills, based on the requirements from Rengifo and Li.
2 BCB then assigned that BCIS agreement to MineOne. BCB and
3 MineOne then entered into the development, hosting, and
4 services agreement on June 9th of '22. BCB and MineOne then
5 entered into a side letter regarding the digital mining
6 facilities, right of first refusal, on the same date,
7 June 9th, 2022. And BCB and Terra Crypto, Inc., entered into
8 the consultancy services agreement on June 9th of 2022.

9 Ultimately, BCB assigned its valuable power contract
10 with BHC and the rest of its up-front development work to
11 MineOne in return for MineOne's promise to compensate BCB in
12 Phase 2 of the project for that up-front work and value.

13 Q. Did BCB take any actions to protect the value of its
14 up-front development work in the agreements with Rengifo and
15 Li entities?

16 A. Yes.

17 We did everything we could to protect the value of
18 the up-front work that we assigned to MineOne in the
19 DHS agreement. Specifically we negotiated provisions into the
20 agreements with MineOne that -- that indicated the following:
21 In the side letter it says that if the facilities are ever
22 sold -- like they are about to be sold right now to
23 CleanSpark -- and if the purchaser no longer required services
24 of BCB in relation to the facilities, then MineOne would pay
25 BCB an amount equal to the net present value of the budgeted

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

49

1 amount of hosting fees net of costs and consulting fees
2 therein.

3 Furthermore, there's a provision in the DHS agreement
4 where, in the event of a MineOne event of default, then,
5 ultimately, MineOne would be liable for that -- that same
6 amount.

7 Q. Mr. Murphy, what is the value of that amount?

8 A. It is just over \$19.4 million as of February 28th, 2024,
9 and that was calculated by BCB's expert witness Patrick Gahan.

10 Q. Does BCB and do you agree with that amount calculated by
11 Expert Witness Gahan?

12 A. Absolutely.

13 Q. Did MineOne ever pay anything for BCB's up-front
14 development work and the valuable BCIS power agreement that
15 BCB assigned to MineOne?

16 A. No. MineOne avoided paying for BCB's valuable up-front
17 work when MineOne anticipatorily repudiated the DHS agreement.

18 Q. Did you provide an affidavit on May 15th of this year in
19 which you addressed the merits of BCB's case and the
20 substantial likelihood of BCC -- BCB's success at trial?

21 A. Yes, I did.

22 Q. Do you affirm all of that affidavit testimony today?

23 A. I do.

24 Q. Do you have a copy of the DHS agreement with you today?

25 A. I do.

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

50

1 Q. Can you please screen-share that document with the Court
2 and all of us.

3 A. I would be happy to. Let me pull that up.

4 Q. All right.

5 A. Here you go. This is the DHS agreement.

6 Q. And what's the date of it?

7 A. It's dated June 9th, 2022.

8 Q. Is this the core written contract between BCB and MineOne
9 Wyoming Data Center, LLC?

10 A. Yes, it is.

11 Q. Who signed the DHS agreement for BCB?

12 A. Emory Patterson, one of BCB's members.

13 Q. Who signed it for Wyoming -- MineOne Wyoming Data?

14 A. Erick Rengifo.

15 MR. MURPHY: Your Honor, I would move the
16 introduction of this exhibit into evidence. It's noted as
17 Plaintiff's Exhibit 15.

18 MS. COLBATH: No objection.

19 THE COURT: It's received.

20 (Plaintiff's Exhibit 15 received into evidence.)

21 BY MR. MURPHY:

22 Q. Mr. Murphy, what other written and signed agreements or
23 contracts are there between BCB and MineOne Wyoming Data
24 Center?

25 A. There is a side letter regarding digital mining

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

51

1 facilities, right of first refusal, which we call the side
2 letter, dated June 9th, 2022.

3 Q. Can you please screen-share that with the Court?

4 A. Yes, coming right up.

5 Q. Is that it?

6 A. This is it.

7 Q. Who signed this side letter on behalf of BCB?

8 A. Emory Patterson.

9 Q. And who signed it on behalf of MineOne Wyoming Data?

10 A. Erick Rengifo.

11 MR. MURPHY: Your Honor, I would move the
12 introduction of the side letter into evidence as Plaintiff's
13 Exhibit 16.

14 MS. COLBATH: No objection.

15 THE COURT: Received.

16 (Plaintiff's Exhibit 16 received into evidence.)

17 BY MR. MURPHY:

18 Q. Mr. Murphy, what written and signed agreements or
19 contracts exist between BCB and Terra Crypto, Inc.?

20 A. The -- there was one contract, the consulting services
21 agreement or CS agreement.

22 Q. Can you please screen-share that with His Honor?

23 A. Yes. I'd be happy to.

24 MR. MURPHY: I can see it. Can you?

25 MS. COLBATH: Yes.

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

52

1 MR. MURPHY: All right.

2 BY MR. MURPHY:

3 Q. Who signed the CS agreement for each of the parties,
4 Mr. Murphy?

5 A. Emory Patterson signed on behalf of BCB, and Erick Rengifo
6 signed on behalf of Terra Crypto, Inc.

7 MR. MURPHY: Your Honor, I would move the
8 introduction of the CS agreement into evidence as Plaintiff's
9 Exhibit 17.

10 MS. COLBATH: No objection.

11 THE COURT: It's received.

12 (Plaintiff's Exhibit 17 received into evidence.)

13 BY MR. MURPHY:

14 Q. Are there any other written agreements or contracts by and
15 between BCB and the MineOne defendants?

16 A. No, there are not.

17 Q. Did BCB substantially perform its obligations in the
18 DHS agreement both in Phase 1 and in preparing for Phase 2?

19 A. Yes, it did.

20 Q. Did BCB substantially perform its obligations in the
21 CS agreement?

22 A. Yes, it did.

23 Q. Do you describe in your merits affidavit all the ways and
24 for all the reasons BCB substantially performed its
25 obligations in the DHS agreement and the CS agreement?

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

53

1 A. Yes, I did.

2 Q. Do you also describe in your merits affidavit all the ways
3 and for all the reasons known to you how MineOne and Terra
4 failed and/or chose not to honor or meet their obligations to
5 BCB under the DHS agreement, CS agreement, and side letter,
6 which unjustified actions constitute a material breach or
7 material breaches of those agreements?

8 A. Yes.

9 MS. COLBATH: Objection, Your Honor; leading here.
10 I wasn't going to object, but with questions of that sort,
11 I've got to protect the record here.

12 THE COURT: Sustained.

13 MR. MURPHY: I'll rephrase.

14 BY MR. MURPHY:

15 Q. Did you also describe in your merits affidavits all the
16 ways how MineOne and Terra failed and/or chose not to honor or
17 meet their obligations to BCB under those agreements?

18 A. Yes, I (indiscernible) --

19 MS. COLBATH: And I (indiscernible) --

20 BY MR. MURPHY:

21 Q. Do you describe in your merits affidavit how, over the
22 course of the project, the following took place:

23 One, that MineOne entered into contracts with
24 multiple vendors to procure vendors' materials, equipments,
25 and/or services? Two, that several of these vendors did not

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

54

1 substantially perform their contractual obligations to
2 MineOne? And, three, that, in several instances, how MineOne
3 has wrongfully blamed BCB for MineOne's vendors'
4 responsibilities to perform under their respective agreements
5 with MineOne?

6 MS. COLBATH: Objection; leading.

7 THE COURT: Sustained.

8 A. I did.

9 BY MR. MURPHY:

10 Q. Did you describe in your merits affidavit how each of the
11 parties complied or did not comply with their agreements?

12 A. Yes, I did.

13 Q. Mr. Murphy, as you mentioned earlier, the DHS agreement
14 provided for two phases. Tell His Honor what those phases
15 were.

16 A. The first phase is called Phase 1, the build and
17 implementation phase, and then there was a Phase 2, the
18 operations and maintenance phase.

19 Q. Does the DHS agreement identify specific obligations
20 required of BCB during both Phase 1 and Phase 2?

21 A. Yes.

22 Q. Regarding Phase 1, what were BCB's obligations and how did
23 BCB substantially perform those Phase 1 obligations?

24 A. My merits affidavit identifies each of BCB's specific
25 Phase 1 obligations and how BCB substantially performed each

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

55

1 of those Phase 1 obligations.

2 My merits affidavit also includes Bates-numbered
3 references to documents and communication to support my
4 assertions of how BCB substantially performed its Phase 1
5 obligations.

6 Q. Have you prepared an exhibit identifying that?

7 A. I -- I did, yes. But I -- I --

8 Q. Can we -- do we need to even go through that, or can we
9 just move beyond?

10 A. I think we -- I think we probably need to move beyond with
11 our limited time.

12 Q. Well, let's move on, then, to Phase 2.

13 Regarding Phase 2 -- BCB's Phase 2 obligations under
14 the DHS agreement -- did BCB perform any of those?

15 A. MineOne and Terra anticipatorily repudiated the agreements
16 with BCB before Phase 2, and this precluded BCB from
17 fulfilling its Phase 2 obligations; however, BCB had taken
18 steps to prepare for the future fulfillment of its Phase 2
19 obligations.

20 Q. What were BCB's Phase 2 obligations and what actions did
21 BCB take to prepare for the fulfillment of its Phase 2
22 obligations?

23 A. My merits affidavit, again, identifies each of BCB's
24 specific Phase 2 obligations and the actions BCB took to
25 prepare for the future fulfillment of those Phase 2

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

56

1 obligations.

2 It also includes Bates-numbered references to
3 documents and communications that support my assertions of the
4 steps that BCB took to perform and to prepare for performing
5 of its Phase 2 obligations.

6 Q. Tell His Honor what happened in early March of 2023.

7 A. BCB and MineOne were preparing for the upcoming start of
8 Phase 2, and MineOne anticipatorily repudiated the
9 DHS agreement by removing BCB from the role promised to it by
10 MineOne in the DHS agreement. This meant that BCB would not
11 be receiving significant Phase 2 compensation promised to it
12 in the DHS agreement.

13 Q. How did Rengifo and Li indicate they were removing BCB
14 from BCB's agreed-upon Phase 2 role?

15 A. Rengifo and Li communicated this to BCB on multiple
16 occasions.

17 For example, on a March -- on March 7, on a recorded
18 call, Rengifo said, quote, "Our major partner here, Bitmain,
19 doesn't want you, BCB, to be the host and the manager."

20 He goes on to say later in the call "I go directly to
21 the point. So what they, Bitmain, want is Wiley and team to
22 do the hosting and management."

23 Rengifo later said in the call "So Wiley is going to
24 be in charge. Wiley and team is going to be in charge of
25 everything that is operations, you know, the miners;

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

57

1 everything that is related to the operations. Everything."

2 And -- and, lastly, Rengifo said "What these guys,
3 Bitmain, want to do is basically you, BCB, out completely."

4 The --

5 Q. What is -- yeah. I was just going to ask you what the
6 final and --

7 A. Yeah.

8 MS. COLBATH: Your Honor -- objection, Your Honor.
9 He -- this is all hearsay. He's talking about some tape
10 and --

11 THE WITNESS: This is a recorded call. This is a
12 recorded call that has -- we have produced to you.

13 MS. COLBATH: Play the recorded call and not -- that
14 you -- you're welcome to play the recorded call. But his
15 recitation is hearsay.

16 THE COURT: Sustained.

17 MR. MURPHY: It's not hearsay, Judge, because it's
18 the admission of a party opponent. By definition it is not
19 hearsay under Rule 801.

20 MS. COLBATH: He -- he's talking about -- he --
21 Wiley -- Wiley is not connected with any of my clients.

22 MR. MURPHY: That's so untrue. I don't even know
23 where to start.

24 THE WITNESS: We have -- we have evidence. I just
25 want to note we have evidence where I said Wiley --

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

58

1 MS. COLBATH: Mr. Murphy, you can't give speeches.

2 All right? You've already got -- you've already got your --

3 MR. MURPHY: Wait a minute. You can't give speeches,
4 either.

5 MS. COLBATH: No. I can make objections. But the
6 witness can't.

7 And I'm objecting that the questions are -- are
8 eliciting hearsay. And he's talking about conversations that
9 are double hearsay, and I'm making an objection.

10 THE COURT: Sustained.

11 BY MR. MURPHY:

12 Q. What is the -- what is the final and strongest example of
13 MineOne removing BCB?

14 A. I -- I'd love to share this because it's irrefutable that
15 it took place.

16 That final and strongest example of MineOne removing
17 BCB and taking over the project was via a March 13 email from
18 Jiaming Li which Rengifo had approved via a Skype message
19 with Li, and it had a proposed no-choice amendment to the
20 DHS agreement and it indicated the following: One, BCB would
21 not be allowed to operate the North Range site and it would
22 not receive the agreed-upon consideration tied to those
23 services, including the compensation for all of BCB's up-front
24 work to secure the power agreement with Black Hills.

25 Two, BCB would not be allowed to implement or operate

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

59

1 the Campstool site. It would not receive the agreed-upon
2 consideration tied to those services, including the
3 compensation for BCB's up-front work to secure power agreement
4 with Black Hills.

5 Three, BCB would no longer have its right of first
6 refusal or buyout in the event another entity purchased the
7 development, like CleanSpark is currently doing.

8 Four, in return for a much-reduced compensation
9 package, BCB would be expected to perform a much-reduced scope
10 of menial work.

11 Five, BCB could earn additional compensation by
12 assisting MineOne's attorneys in MineOne's claims against
13 third parties and, two, assisting MineOne's secured tax
14 reductions or tax exemptions.

15 Lastly, in order for BCB to receive payment for the
16 \$90,000 BCB had invoiced on March 6th of 2023 for Phase 1
17 services BCB had already provided and which Li had promised to
18 pay \$45,000 towards on March 13th of '23, BCB would now have
19 to sign the proposed amendment just to receive \$40,000, and
20 then it would have to deliver the site to full operational
21 completion to receive the remaining \$50,000 for work already
22 completed.

23 Q. Did anything in particular stand out in Rengifo's and Li's
24 proposed amendment?

25 A. So many things.

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

60

1 One item I'd like to note today is that Rengifo and
2 Li wanted BCB to assist MineOne's attorneys in MineOne's
3 claims against third parties. And that's because MineOne knew
4 that its other vendors had failed to perform their respective
5 obligations to MineOne.

6 But fast-forward to now. And because BCB is the only
7 party litigating against MineOne and Terra, the MineOne
8 defendants now claim that everything was BCB's fault. It is
9 telling that at no time up until BCB filed its lawsuit did
10 Rengifo or Li tell BCB that BCB had committed an event of
11 default and/or breached the DHS agreement.

12 The truth --

13 THE COURT: Please -- slow down. Slow down.

14 THE WITNESS: Sorry. I get -- I get emotional,
15 Judge, when talking about these things.

16 A. (Continuing.) It is telling that at no time up until BCB
17 filed its lawsuit did Rengifo or Li tell BCB that BCB had
18 committed an event of default and/or breached the
19 DHS agreement.

20 The truth is that MineOne wanted BCB to help collect
21 against the vendors who actually failed to meet their
22 obligations to MineOne, one of those -- I think, for
23 example -- being CEGEN.

24 BY MR. MURPHY:

25 Q. Did Rengifo and Li's proposed amendment seem like a

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

61

1 proposal to you?

2 A. No. Absolutely not. It was more like an attempt to
3 extort and force BCB into accepting a reduced role and reduced
4 compensation.

5 Rengifo and Li believed they could force BCB into
6 accepting this reduced role and reduced compensation because
7 they were withholding BCB's earned and invoiced \$90,000.

8 In a Skype message to Rengifo on March 3rd, Li said,
9 quote, "BCB will have no option but to accept the proposal for
10 the 45 megawatts," to which Rengifo responded, quote, "Yes,
11 they have no option."

12 Q. Did BCB notify Rengifo --

13 MS. COLBATH: Again, Your Honor, objection.

14 The witness is reading and he's referencing documents
15 that haven't been authenticated. He's not a party to them.
16 And he's just reading a script this entire time.

17 I know that I'm going to be able to get a copy of it
18 before I cross-examine him, but he can't be testifying to
19 documents that haven't been introduced and he's doing it --

20 THE WITNESS: You introduced --

21 MS. COLBATH: -- text messages between X and Y that
22 he's not even a party to.

23 MR. MURPHY: These are Skype messages that your
24 clients produced in discovery. We're reading from them.

25 MS. COLBATH: And this is an evidentiary hearing

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

62

1 where you need to authenticate and you can't read hearsay from
2 a script.

3 MR. MURPHY: It's not hearsay, Judge, because these
4 are the admissions of a party opponent when they're talking to
5 each other.

6 The defendants' two principals, Rengifo and --

7 MS. COLBATH: No --

8 MR. MURPHY: Paula, Paula, Paula.

9 MS. COLBATH: Go ahead.

10 MR. MURPHY: These are -- these are the words in the
11 defendant principals' own Skype messages to each other that
12 Michael Murphy is reading.

13 MS. COLBATH: Introduce them, then.

14 MR. MURPHY: They're not hearsay. I can't even --
15 I can't even finish with you.

16 MS. COLBATH: Your Honor, they're acknowledging he's
17 reading from a script where he's embedded references to other
18 documents.

19 MR. MURPHY: No, no, not invented.

20 MS. COLBATH: What?

21 MR. MURPHY: That's untrue. This is your own
22 clients' Skype messages.

23 MS. COLBATH: I haven't seen the Skype. I'm entitled
24 to see it.

25 MR. MURPHY: But you produced them to me. What --

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

63

1 don't tell me you haven't seen them.

2 MS. COLBATH: Produced? Then mark it, have it
3 identified, and introduce them. But he can't testify about a
4 document --

5 MR. MURPHY: We'll do it later.

6 THE WITNESS: Paula, see Exhibit 21, pages 46 to 48.
7 This was provided on the 19th.

8 MS. COLBATH: You don't have to do that.

9 THE WITNESS: Exhibit 21, pages 46 to 48.

10 MS. COLBATH: None of this is in evidence.

11 THE WITNESS: You have it. It's -- it was Exhibit 21
12 provided on June 19th.

13 MS. COLBATH: So then your counsel knows what to do.
14 But --

15 MR. MURPHY: And I would move -- then I'll move its
16 admission as Plaintiff's Exhibit 30 today.

17 MS. COLBATH: It's Exhibit 30? I want to --

18 MR. MURPHY: I'm going to -- I'm going to call it
19 Exhibit 30 because -- just for ease of reference.

20 THE WITNESS: 21, if we want to be precise, Dad.

21 MR. MURPHY: All right. Let's call it Exhibit 21.

22 I move the admission of BCB's Exhibit 21 into
23 evidence to prove the truth of what Mr. Murphy just
24 testified to.

25 MS. COLBATH: I have multiple objections. Hold on

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

64

1 here. You're moving --

2 MR. MURPHY: Then let's go to your time and not my
3 time.

4 MS. COLBATH: Exhibit 21 is a compilation.

5 Okay.

6 MR. MURPHY: This cannot be counted against my time,
7 this -- this --

8 THE COURT: No, it's not.

9 MR. MURPHY: Thank you, Judge.

10 MS. COLBATH: So Exhibit 21 includes unauthenticated
11 Skype messages. It includes charts and graphs that were
12 prepared for litigation, a jury, or something of the sort.

13 It includes an affidavit from Mr. Gahan who -- or
14 Mr. Randall -- who's not here to testify. And if you wanted
15 him to testify, you had to have him present, so I object to
16 the Randall affidavit that is part of 21.

17 There's -- there's documents I have no idea where
18 they originated. They're charts, BCB on-site -- this is about
19 150 pages of miscellaneous collections.

20 I absolutely object to the admission of Exhibit 21.

21 MR. MURPHY: Then I -- then we will give you only the
22 page that has the Skype communications that Mr. Murphy just
23 testified to, and we won't introduce the rest of it.

24 MS. COLBATH: I'd like to have them because, if
25 I want to cross-examine him on those, you need to identify

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

65

1 the pages for me. The exhibit is about is 150 pages.

2 THE WITNESS: 46 to 48.

3 MR. MURPHY: There you go. Now -- now --

4 THE WITNESS: But have --

5 MS. COLBATH: Wait. Hold it. Where are there
6 page numbers?

7 THE WITNESS: I'm sorry.

8 May -- if the Court allows, I'd like to provide a
9 clarification on this point.

10 MR. MURPHY: Go ahead.

11 THE WITNESS: Can I proceed?

12 So, Paula -- Ms. Colbath -- the quote where Li said
13 "BCB will have no option but to accept the proposal for the
14 45 megawatts" and, Rengifo's response, "Yes, they have no
15 option," that was part of Exhibit 6 that we provided to you on
16 June 19th.

17 And that's pages (indiscernible) and then --

18 MS. COLBATH: Now -- Exhibit 21 --

19 THE COURT REPORTER: Excuse me.

20 (Reporter seeks clarification.)

21 THE COURT: I think the reporter --

22 THE WITNESS: Yes, Exhibit 21 --

23 THE COURT: We can't report any of this. You've
24 totally lost the reporter at this point speaking over each
25 other.

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

66

1 MR. MURPHY: Mr. Murphy, go ahead without any
2 interruption, yeah.

3 THE COURT: I think -- I think if you will offer --
4 well, first of all, let's take a recess for 15 minutes to give
5 the reporter a break. And me a break. And -- and then we can
6 resume this.

7 But, in the meantime, I think you can straighten out
8 with your client, Mr. Murphy, the specific exhibits that you
9 wish to offer and what their numbers will be, that they can be
10 displayed or Ms. Colbath will have an opportunity to look at
11 them.

12 MR. MURPHY: Okay. Thank you, Your Honor.
13 Thank you.

14 MS. COLBATH: Your Honor, before the break, could you
15 also require Mr. Murphy to send me his -- the script he's been
16 reading off of so I have the benefit of it during cross?

17 THE COURT: I think that's fair.

18 MS. COLBATH: Thank you.

19 THE COURT: We'll stand in recess.

20 MR. MURPHY: Oh, last question: How much time do
21 I have left, Your Honor, if you know?

22 THE COURTRoom DEPUTY: 51 minutes.

23 THE COURT: 51 minutes.

24 MR. MURPHY: Thank you, Judge.

25 (A recess was taken from 3:08 p.m. to 3:39 p.m.)

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

67

1 THE COURT: I'm informed the parties are ready to
2 proceed in this matter.

3 I don't see Ms. Colbath on my screen -- there she is.

4 MS. COLBATH: I'm here, Your Honor.

5 THE COURT: All right.

6 Have you got what you need, Ms. Colbath? So far.

7 MS. COLBATH: I do. I do. Thank you, Your Honor.

8 THE COURT: All right.

9 Continue, Mr. Murphy.

10 I'm not sure -- I'm not sure that I'm broadcasting.
11 I'm sorry.

12 MR. MURPHY: I can hear you, Judge. This is
13 Pat Murphy.

14 THE COURT: All right. I'll let you proceed.

15 MR. MURPHY: Okay.

16 Your Honor, over the break you had ordered us to send
17 the transcript, and we've done that to opposing counsel. And
18 I wanted to explain to you and then make an offer.

19 We first sent the defense counsel the direct
20 examination script that Michael Murphy and I have worked up
21 the last few days, and we had carved off a -- a part for
22 rebuttal testimony and didn't send that. But then we since
23 then said, "Well, let's just give them the whole thing," and
24 I think we've already sent everybody the entire thing.

25 And I would like to offer -- because the defense

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

68

1 counsel wants that so much, I would like to offer the long
2 script, everything, into evidence as Plaintiff's
3 Exhibit No. 100 at this time.

4 MS. COLBATH: I -- I object. The document is
5 completely unorthodox, that a script would be prepared for a
6 witness to read during testimony.

7 This is -- it -- just looking at it quickly, I would
8 make it akin to something like a demonstrative exhibit where,
9 clearly, the probative value of this as -- as an exhibit and
10 evidence is substantially outweighed by the prejudice.

11 I'd also ask that Mr. Murphy's testimony be stricken
12 up to this point and -- and that he not be permitted to
13 continue to use a script to testify at an evidentiary hearing
14 with answers that he -- Mr. Murphy just conceded they worked
15 on together.

16 MR. MURPHY: I worked on the questions; he did the
17 answers. With as much information as we have to cover in
18 the -- the few minutes we have left, it was absolutely needed.

19 THE COURT: Well, let me --

20 MR. MURPHY: You can impeach him.

21 THE COURT: Go ahead.

22 I note there's lots of argument back and forth that
23 you're thinking of, and I appreciate -- and I appreciate what
24 you're doing. I'm not sure I need to see the script. I'd
25 rather hear the testimony.

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

69

1 But it's clear here we're running out of time. And
2 Ms. Colbath's going to need adequate time in order to present.
3 I had three matters tomorrow morning scheduled. I've asked --
4 would like to talk to you to see if we can't continue on
5 tomorrow morning.

6 And I have a full afternoon, as well.

7 But I thought that would certainly afford Ms. Colbath
8 the opportunity to take her time, as well.

9 MR. MURPHY: Your Honor, if I might -- this is
10 Pat Murphy.

11 I have depositions with Bob Schuster the next
12 two days in Lander. We've tailored everything to meet
13 Your Honor's order that we get all this done within
14 90 minutes. That's what I'm fighting and struggling to do.

15 Ms. Colbath has her 90 minutes to use as she wants.

16 I do not -- I'm not able to do it tomorrow. I --
17 I've got a -- Judge Bluemel in Kemmerer has ordered these
18 depositions to be taken.

19 I can't do this. I -- we need to finish tonight.
20 And the CleanSpark -- they're trying to close tomorrow.

21 I -- we just -- we need to get this done, with all
22 due respect, in accordance with Your Honor's earlier order.

23 THE COURT: Okay. I'll -- I'll try to soldier on
24 with you. But you better wind it up because we've used about
25 90 minutes already.

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

70

1 MR. MURPHY: But I --

2 MS. COLBATH: Thank you.

3 MR. MURPHY: -- I don't think -- I -- well, we've
4 used part of my time, part of her time.

5 You told me that I've got 51 minutes left for my
6 presentation. I'm ready to roll.

7 THE COURT: Okay. Let's go.

8 MR. MURPHY: Okay.

9 BY MR. MURPHY:

10 Q. Mr. Murphy, do you understand that BCB must prove various
11 elements by a preponderance of the evidence to demonstrate its
12 entitlement to a prejudgment writ of attachment and
13 garnishment?

14 MS. COLBATH: Objection, Your Honor; seeks a legal
15 conclusion. This witness isn't a lawyer, isn't a legal
16 expert.

17 THE COURT: Sustained.

18 BY MR. MURPHY:

19 Q. Do you understand that BCB must first show that it is
20 likely to win a judgment on both its claims for relief and the
21 MineOne's defendant counterclaims, as well?

22 MS. COLBATH: Michael, you're -- you're muted.

23 THE WITNESS: Thank you, Paula -- Ms. Colbath.

24 A. Yes, I understand that, Mr. Murphy.

25 ///

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

71

1 BY MR. MURPHY:

2 Q. Are the MineOne defendants indebted to BCB?

3 A. Yes, they are.

4 Q. For how much money are the MineOne defendants indebted
5 to BCB?

6 A. \$19,985,667 as of February 28th, 2024, based upon the
7 expert report of Patrick Gahan, BCB's expert witness.

8 Q. Are there any legal setoffs to this indebtedness?

9 A. No.

10 Q. Have the MineOne defendants or any of the defendants paid
11 anything to BCB on this indebtedness?

12 A. No, they have not.

13 Q. And what is the nature of the MineOne defendants'
14 indebtedness to BCB?

15 A. It represents BCB's compensatory damages from MineOne's
16 breaches of its contract with BCB.

17 Q. Is BCB's requested attachment of the CleanSpark sales
18 proceeds sought to hinder, delay, or defraud any creditor of
19 MineOne?

20 A. No, it is not.

21 Q. Have -- has the MineOne defendants' payment of the
22 19,985,667 indebtedness been secured by any mortgage or lien
23 upon the MineOne defendants' real or personal property in the
24 State of Wyoming?

25 A. No. It is not secured by a mortgage or a lien.

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

72

1 Q. Are the MineOne defendants about to assign, remove,
2 dispose of, or conceal any of its property with the intent to
3 defraud BCB?

4 A. Yes. I detailed this in my June 24th, 2024, amended
5 emergency motion affidavit.

6 Q. And what amount of the CleanSpark sales proceeds is BCB
7 requesting of the Court?

8 A. Regarding the Campstool transaction, BCB requests this
9 Court grant writs of attachment on \$4,312,729 of the
10 11.25 million related to that property.

11 And related to the North Range transaction, we
12 request \$11,216,436. And as relates to the Black Hills
13 security fund, we request the full \$999,111, and that is a
14 total of \$16,528,276.

15 MS. COLBATH: Your Honor, could I get an -- a
16 direction that the witness not continue to use his script and
17 read the answers?

18 MR. MURPHY: How does he remember those specific
19 numbers without some notes to refresh his memory, Your Honor?

20 MS. COLBATH: You introduce documents. You don't
21 read from scripts.

22 MR. MURPHY: I don't have time to.

23 THE COURT: I'm going to overrule your objection.

24 If he -- if Mr. Murphy can testify that he cannot
25 remember evidence in this case sufficient to testify without

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

73

1 referring to notes, he -- he may do so, but he needs to say
2 when he's using notes to refresh recollection so that
3 Ms. Colbath knows. Otherwise, if he does remember, he should
4 be testifying without the use of notes.

5 MS. COLBATH: Your Honor, he -- he's reading
6 verbatim --

7 THE COURT: And -- and, besides --

8 MS. COLBATH: Okay. Yeah.

9 THE COURT: -- we're doing this --

10 MS. COLBATH: I understand.

11 THE COURT: -- without requiring the people from
12 New York to be present here in Cheyenne, Wyoming. And
13 allowing Mr. Murphy to be up somewhere else because he has
14 depositions with Mr. Schuster and wants to be convenient for
15 Mr. Schuster to take his depositions.

16 So the Court's accommodated. We're doing this with
17 everybody patiently listening in at great expense on Zoom
18 and -- when they could probably be doing something more
19 productive or present in the courtroom and able to interpose
20 objection.

21 MR. MURPHY: I'll continue, Your Honor, with your
22 leave.

23 BY MR. MURPHY:

24 Q. What size of bond, if the Judge grants the writ, is BCB
25 requesting?

1 A. BCB's requesting a thousand-dollar bond but not more than
2 several thousand dollars. And that's because there's no
3 damage or loss that would be incurred or supported by MineOne
4 as a result of a wrongful issuance of the writ.

5 The only potential damage that MineOne posits is the
6 potential damage that would result if the writ causes
7 CleanSpark to walk away from the deal, but there's no evidence
8 to indicate that CleanSpark's going to walk away from the deal
9 if the writ is issued.

10 Q. Let me switch gears to the last area of your direct
11 examination. And this is about Dr. Rengifo's alleged loans.

12 I need you to tell Judge Johnson if you're qualified
13 to analyze Dr. Rengifo's alleged transactions and whatever
14 supporting documentation the defendants have provided to make
15 that determination.

16 A. Yes. I believe I am.

17 Q. Why -- why do you think you're qualified to do that?

18 A. I hold bachelor's and master's of accountancy degrees from
19 the University of Notre Dame's Mendoza College of Business,
20 where I graduated number one in each of my respective classes.
21 I've been a certified public accountant and a licensed
22 real estate broker since 2006.

23 I've also worked at the Financial Accounting
24 Standards Board, which is responsible for issuing accounting
25 rules that the Securities and Exchange Commission requires all

1 public companies in the United States to follow.

2 And I would note that one thing that accounting
3 standards attempt to do and which CPAs do when performing
4 accounting work is to account for the economic substance of a
5 transaction, rather than the legal form.

6 And, in the context of Rengifo's alleged transactions
7 or related-party loans, that means I believe I'm qualified to
8 look at Rengifo's assertions and the supporting documentation
9 and then evaluate whether the true economic substance of those
10 transactions matches its legal form, regardless of whatever
11 legal form Rengifo claims for those transactions.

12 Q. Well, where should this analysis start?

13 A. It should start with better understanding the entities
14 involved in the transactions and the owners and managers of
15 those entities.

16 And I have an exhibit that I would like to share to
17 help explain this mess of entities that are involved.

18 Q. Could you please share your screen with that, what we're
19 calling Exhibit 9 for everybody.

20 MS. COLBATH: Well, hold on. Let me pull your
21 Exhibit 9.

22 MR. MURPHY: It's two pages, Paula, and we emailed
23 that to you this morning.

24 MS. COLBATH: Well, I'm going to -- you -- you
25 emailed this today for the first time?

1 MR. MURPHY: No. You had it last week on our
2 designation deadline, but we resent it to you today so you'd
3 have easy access to it.

4 Let's -- Mr. Murphy, let's continue.

5 BY MR. MURPHY:

6 Q. Can you please explain this proposed Exhibit 9.

7 A. Yes. I'd like to focus on the related-party lenders that
8 Rengifo discusses in Section 64(b) and 64(c) of his
9 declaration.

10 The first is Terra Crypto, Inc. That entity --
11 Rengifo and Li are the only two beneficial owners of Terra.
12 They control Terra; one or both of them serve as management of
13 Terra. Rengifo signs documents on behalf of Terra.

14 Similarly, Rengifo and Li serve as management of
15 MineOne, as two of three primary decision-makers for that
16 entity. They control MineOne. Rengifo and Li are the only
17 two individuals that have been known to sign documents for
18 MineOne.

19 And, as such, I believe Terra Crypto and MineOne are
20 very much related parties.

21 Further, both Rengifo and Li have held management
22 positions at Defendant Bit Origin, an entity which invested
23 \$3 million into the project via MineOne Cloud.

24 The next related-party lender I want to talk about --
25 it's actually a grouping of them. It's Yu & Jing Investments,

1 Oriental Sun Enterprises, and Rising Sun Properties, which
2 Rengifo asserts in his declaration are third parties.

3 These entities are three of four owners of record.
4 They are members of MineOne. These entities collectively own
5 17 percent of MineOne. Each of these entities have invested
6 at least a million dollars into MineOne in early 2023.

7 These entities and MineOne are absolutely related
8 parties, contrary to Rengifo's assertion that they are third
9 parties.

10 The next entity I want to look at is BitGeek DT Group
11 Limited, again which Rengifo asserts is a third party.

12 BitGeek was founded by Chong Wang in and around 2019.
13 According to Bit Origin's filings, Chong Wang is the founder
14 of BitGeek. We think but I can't say with certainty that --
15 we believe Chong Wang is a principal owner and/or management
16 person of BitGeek.

17 Based on accounting records that were disclosed by
18 the defendants in discovery, even though the defendants'
19 amended corporate disclosure statement does not indicate this,
20 BitGeek appears to have invested at least \$5 million into
21 MineOne Cloud.

22 Mr. Wang was also the CEO of Defendant Bit Origin for
23 a period of time, and, as I said, that entity invested
24 \$3 million into MineOne Cloud. And, according to MineOne in a
25 disclosure to Bitmain, Mr. Wang is the ultimate beneficial

1 owner of the entire North Range project.

2 And although the defendants will not admit to it nor
3 provide any documents or communications with Mr. Wang, even
4 though we've asked for them, there is evidence that BCB has
5 that shows Mr. Wang is, indeed, one of the three founders and
6 primary decision-makers for MineOne Wyoming.

7 And so, based on that, I believe that BitGeek and
8 MineOne are related parties.

9 And the last one I want to mention is Intellectual
10 International Capital, which, again, Rengifo asserts is a
11 third party. This entity is solely owned and controlled by
12 Jiaming Li.

13 Starting in March of '23 and for at least 45 days
14 thereafter, this entity made direct payments to multiple
15 vendors of MineOne to satisfy MineOne invoices. As we
16 mentioned earlier, Li is a management person of MineOne and
17 one of two persons who signs documents on behalf of MineOne.

18 Based on that, Intellectual International Capital is
19 a related party to -- to MineOne.

20 Q. Did you create Exhibit 9 that the Court is looking at now?

21 A. Yeah. Yes, I did.

22 Q. And is there a second page to Exhibit 9?

23 A. There -- there is a second page. Let me just scroll down
24 for us.

25 Q. All right. And that shows where all the CleanSpark money

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

79

1 would -- would be going under the defendants' proposal; is
2 that right?

3 A. Yes. That is what this exhibit shows, how they want to
4 distribute the proceeds from the CleanSpark deal, the
5 remaining assets of MineOne, to alleged related-party lenders
6 and unsecured creditors.

7 Q. Let's go back to page 1 of Exhibit 9 if you can.

8 You prepared this exhibit. From what information did
9 you gather to prepare it?

10 A. I used the defendants' amended corporate disclosure
11 statement that they provided to us. I've used subpoena
12 information from one of the Terra entities. We have used
13 accounting records that were produced by the defendants.

14 I believe those were three of the main sources of
15 information.

16 Q. In other words, is this -- does this exhibit demonstrate
17 what -- information provided by the defendants, not
18 information provided from BCB?

19 A. Yes. This is information provided by the defendants.

20 Q. Okay. Was it also taken from information provided in
21 Erick Rengifo's May 2024 declaration?

22 A. Yes. That information factored into this, as well.

23 Q. What is the implication of transactions between related
24 parties?

25 A. According to one authoritative source in the accounting

1 world, the potential problem with a related-party transaction
2 is that the economic substance may differ with its legal form.

3 And according to the Financial Accounting Standards
4 Board, Statement No. 57 -- again, an entity that I used to
5 work for -- "Transaction" -- and it's -- quote, "Transactions
6 involving related parties cannot be presumed to be carried out
7 on an arm's-length basis, as the requisite conditions of
8 competitive free-market dealings may not exist.

9 Representations about transactions with related parties, if
10 made, shall not imply that the related-party transactions were
11 consummated on terms equivalent to those that prevail in an
12 arm's-length transaction unless such representations can be
13 substantiated."

14 Essentially -- that was the end of the quote.

15 Essentially, what this boils down to is this:
16 Substantiation is absolutely critical to verify that the
17 economic substance matches the legal form asserted by Rengifo
18 in his declaration.

19 Q. Have the defendants provided any substantiation to support
20 their asserted loan transactions?

21 A. They've -- they provided several loan documents and what
22 they call an asset purchase, and it's like a lease agreement.

23 But beyond that they've only provided scant evidence
24 to substantiate the transactions, even though BCB has asked
25 for contemporaneous communications, additional accounting

1 records, and bank statements. And personally, if I may, if I
2 were MineOne, I would want to provide this substantiating
3 information to prove the economic substance of the
4 transactions.

5 Q. As a CPA what factors or characteristics of a debt
6 transaction do you look at when evaluating whether or not it
7 is actually debt as opposed to equity?

8 A. Several factors. And I'll run down the list for you real
9 quick.

10 First, whether or not there's a fixed maturity date
11 on the funding, and a lack of fixed maturity date would
12 suggest camouflaged equity.

13 Another one is how the company intends to repay the
14 funding. For example, knowing that repayment is via the
15 entity's future profits would suggest camouflaged equity.

16 The next is whether or not the funder can enforce
17 payment of principal and interest. And a company not being
18 required to repay the funder until after the company is
19 profitable, that suggests camouflaged equity.

20 Next is if the funder participates in management.
21 And oftentimes participation in management suggests
22 camouflaged equity.

23 Next is the intent of the funder in the company,
24 and -- and an example there is not following proper procedures
25 and formalities for lending suggests camouflaged equity.

1 Next is underfunding of the company, such that thin
2 or inadequate funding of a company could show that there's
3 camouflaged equity.

4 Next is interest payments. A funder's lack of
5 concern for interest payments -- for instance, not being paid
6 interest or waiving interest -- that could suggest camouflaged
7 equity.

8 Next is a company's failure to repay the funding on
9 the due date. And a company who's not repaying the funding by
10 the due date, that could suggest camouflaged equity.

11 Next is the company's ability to procure loans from
12 outside or unrelated sources. And an inability to obtain
13 funding from an outside source or unrelated source, that could
14 suggest that the funding received is camouflaged equity.

15 And the final one I have for today is the intent of
16 the parties based on the precision or accuracy of any
17 instruments documenting the funding. For instance, a lack of
18 attention to detail, such as mistakes in the instrument or
19 unsigned instruments, that could suggest camouflaged equity.

20 Q. Let's begin with your analysis.

21 What's the first related-party lender mentioned by
22 Rengifo?

23 A. That would be Terra Crypto, Inc.

24 Q. And what did he say about that in his declaration?

25 A. He said that, quote, "BCB's delays, improper conduct, and

1 breaches caused MineOne Data to suffer a liquidity shortage
2 due to the delays in getting the site operational. As a
3 result, MineOne Data borrowed a total of \$5,285,701 from
4 Terra" --

5 THE COURT REPORTER: Excuse me.

6 (Reporter seeks clarification.)

7 THE WITNESS: Five million -- \$5,285,701.

8 THE COURT REPORTER: Thank you.

9 A. (Continuing.) -- "in September 20- " --

10 THE WITNESS: You're welcome.

11 A. (Continuing.) -- "in September 2022," end quote.

12 BY MR. MURPHY:

13 Q. How do you respond to that assertion by Rengifo?

14 A. I would say that BCB did not cause the delays, BCB did not
15 commit improper conduct, and BCB did not breach any contract
16 with MineOne. And, further, MineOne did not suffer a
17 liquidity shortage due to BCB. MineOne suffered a liquidity
18 shortage because it did not have the funds available for the
19 project that it earlier represented to BCB and Black Hills
20 that MineOne said it had.

21 Specifically MineOne provided proof of funds before
22 signing the DHS agreement of just under \$21.5 million;
23 however, according to MineOne's own accounting records that
24 they produced in discovery, MineOne had only received just
25 over \$8.1 million in investment capital to the end of

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

84

1 September 2022 and MineOne had spent approximately
2 \$7.7 million by that time.

3 MR. MURPHY: Your Honor, I would move the
4 introduction of Plaintiff's Exhibit 9 into evidence.

5 MS. COLBATH: Again, Your Honor it's a demonstrative
6 here that they -- no citations on it where these actual
7 amounts -- they're not included in the exhibit. He said he
8 referred to our corporate disclosure statement. You could
9 compare that with this document.

10 And the information is not there, so we would object
11 to the introduction of this litigation-prepared document in
12 evidence.

13 THE COURT: I'll accept it as a demonstrative.

14 (Plaintiff's Exhibit 9 received into evidence.)

15 BY MR. MURPHY:

16 Q. Mr. Murphy, can you please go and screen-share your
17 Exhibit No -- Plaintiff's Exhibit 8.

18 A. Yes. There you go.

19 Q. What is the significance of Exhibit 8? And where did it
20 come from and that kind -- foundation for it?

21 A. These are general ledger journal entries produced by
22 Defendant MineOne that appears to be their accounting of the
23 transactions on the project from June of 2022 up through the
24 end of April of '23.

25 BCB has -- we were not provided any accounting

1 records after the end of April of '23, but it appears that we
2 have everything from before that.

3 Q. What is the significance of this document from MineOne as
4 it relates to the -- the related-party loans and transactions?

5 A. Yeah.

6 As it -- as it relates to what I just spoke about
7 regarding the funding, if you add up the amount of investment
8 that came in in the accounting records up to the point in time
9 Erick Rengifo blames the liquidity shortage on BCB, you'll see
10 that they brought in just over \$8.1 million, and then you can
11 see expenditures of approximately \$7.7 million.

12 And what I want to call out is -- is that the -- the
13 issue here is MineOne represented and provided documented
14 proof of funds to BCB that it had \$21.5 million for this
15 project, yet here we are and Erick is saying that they're
16 running into a liquid shortage due to BCB. But they only
17 have -- they're only showing accounting records for just over
18 \$8 million when they should have had the \$21.5 million that
19 was earlier represented.

20 So my point is that there are -- there are liquidity
21 issues here. And I alluded to earlier this could potentially
22 indicate that there was thin or inadequate funding of the
23 entity.

24 Q. We know that MineOne says that it had a September 2022
25 bridge loan. Did they produce the bridge loan documents?

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

86

1 A. No. No, no bridge loan documents have been produced with
2 Terra Crypto.

3 Q. Did MineOne or Terra Crypto provide any other
4 substantiation for the September '22 bridge loan?

5 A. No direct substantiation was provided for that particular
6 loan, no contemporaneous communications, no journal entries in
7 its accounting records for this loan.

8 For instance, in the records I'm sharing on my
9 screen, there's no accounting for any of the things that
10 Dr. Rengifo is describing regarding this bridge loan, and,
11 also, there's no bank statements provided that would show
12 MineOne receiving funds from Terra.

13 I would say this, too: When MineOne did try to
14 substantiate this loan by providing to BCB loan agreements
15 between Terra and one of its affiliated entities, another
16 entity called Terra Global -- Terra Global owns 100 percent of
17 Terra, and Rengifo signed those loan agreements for both Terra
18 and Terra Global. He was signing for both sides of the
19 transaction. I believe that's called a related-party
20 transaction.

21 And those loan documents actually show that there was
22 a loan made in September and then there was a loan made later
23 in December, but, yet, Rengifo's declaration says that MineOne
24 borrowed the just over \$5 million from Terra in September.
25 But then there was the second document that's happening in --

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

87

1 in December.

2 So the timing of these transactions, it doesn't match
3 what Rengifo has claimed in his declaration.

4 Q. Have MineOne or Terra done anything to substantiate that
5 proposed lease agreement?

6 A. So that -- to be clear, what -- what I'm talking about is
7 the September bridge loan. The lease agreement is the next
8 thing that Rengifo wants to -- he explains in his declaration.
9 So let me -- let me -- let me talk about that real fast.

10 So Rengifo in his declaration --

11 MS. COLBATH: Objection. Your Honor, there's no
12 question pending.

13 THE COURT: Sustained.

14 MR. MURPHY: There was. The question is --

15 THE COURT: Sustained.

16 MR. MURPHY: I'll ask it again, Your Honor.

17 THE COURT: Please.

18 BY MR. MURPHY:

19 Q. Have Mine -- did MineOne or Terra do anything to
20 substantiate this alleged lease agreement?

21 A. To clarify, Mr. Murphy, what I just had talked about was
22 the bridge -- was September 2022 bridge loan. The lease
23 agreement I believe you're asking about, that is at the second
24 step of this several-step transaction string that Rengifo
25 talks about in his declaration.

1 And regarding substantiation of that, I'd be happy
2 to -- to answer that question.

3 Q. Let me pose that question to you.

4 What substantiation, if any, did they provide?

5 A. Well, Terra produced a lease agreement, which they called
6 a purchase agreement, as an exhibit -- Exhibit 21, actually --
7 for this hearing.

8 And it immediately raises a red flag. Rengifo and Li
9 signed the lease on behalf of MineOne, but there is no
10 countersignature for Terra.

11 In other words, there -- this is not a fully executed
12 document. It's not even a full document. We don't even have
13 a countersignature. This is sloppy. And -- and this would
14 not happen in a bona fide, arm's-length, third-party
15 transaction.

16 This is what I would call a lack of precision and --
17 and I believe suggests camouflaged equity.

18 Related to that lease purchase agreement that Rengifo
19 declares in his declaration, he also says that Terra owns the
20 underlying land. And to that I would say that was true.
21 Terra did purchase the land from MineOne. That happened on
22 September 19th of 2023. However, importantly, in MineOne's
23 accounting records which I'm sharing on my screen, there are
24 no journal entries to account for that sales transaction to
25 related-party Terra.

1 I also want to make the comment related to this lease
2 arrangement and substantiation of it that you asked about --
3 Rengifo describes this lease as an unattractive lease
4 arrangement. And I want to be clear he means unattractive for
5 MineOne.

6 And that is because the next document in this string
7 of documents Rengifo talks about in his declaration is this
8 March 20th DCA agreement, and it indicates in that agreement
9 that MineOne paid Terra \$2,843,750 in lease payments from
10 September 14th of 2023 to April 1st of '24. And, recall,
11 Terra is solely beneficially owned by Rengifo and Li.

12 So -- so, here, Rengifo and Li have benefited from
13 this unattractive lease arrangement to the detriment of
14 MineOne and MineOne's other investors.

15 Q. Are these genuine loans or bogus loans?

16 MS. COLBATH: Object to -- object to that.

17 THE COURT: I would --

18 MS. COLBATH: And with --

19 THE COURT: I'll sustain the objection, which is
20 leading.

21 BY MR. MURPHY:

22 Q. With your accounting experience and your CPA license and
23 evaluating this, how would you characterize these loans that
24 you've been describing to the Court?

25 A. I would describe them as camouflaged equity.

1 Many of the factors I mentioned earlier regarding
2 evaluating economic substance for its legal form, one can say
3 the legal form of something is this, but, if the economic
4 substance doesn't match that -- which, in this case, most of
5 the factors they don't match -- that analysis then -- it --
6 that -- by performing that analysis, it leads me to the
7 conclusion that these are camouflaged equity amounts.

8 MR. MURPHY: I would move the introduction of
9 Plaintiff's Exhibit 8 at this time.

10 MS. COLBATH: No objection.

11 THE COURT: Exhibit 8 is received.

12 (Plaintiff's Exhibit 8 received into evidence.)

13 BY MR. MURPHY:

14 Q. Have you analyzed the other loans that the defendants have
15 posited or proffered here in the last month?

16 A. Yes, I have, Mr. Murphy. I would say the -- there is --
17 there is still one more loan that -- very importantly, it is
18 now the -- the controlling loan that MineOne and Terra are
19 relying on to try to extract the money out of from MineOne.
20 And that is what they call their DCA, they're saying gives
21 them higher priority than all other creditors other than
22 Antalpa.

23 So before moving on to the other entities, I --
24 I think it would be important for me to share my analysis on
25 this -- this -- basically, there were a lot of transactions

1 alleged between MineOne and Terra. And they all happened and
2 they happened and they happened, and now, all of a sudden, we
3 get to the DCA agreement, which was very conveniently
4 allegedly signed a mere 1 1/2 months, approximately, before
5 MineOne and CleanSpark entered into the agreement. It very
6 much appears like a cleanup or summary-type agreement to cover
7 one's trails and cover one's tracks.

8 And in my analysis of this -- which now defense
9 counsel can -- could look at in depth -- and I also outlined
10 this to a T in my -- I detailed it to a T, rather, in my
11 amended emergency motion affidavit -- I go into great detail
12 of mistakes in the agreement. There's double-dipping that's
13 taking place. There are dates mentioned that would suggest or
14 indicate that the document was actually manufactured or
15 created after March 20th, the date that -- that Rengifo has
16 declared that it was created.

17 And, again, defense counsel now has all of -- all of
18 those reasons in their hand with my statement. They also have
19 all those reasons in my -- in my amended emergency motion
20 affidavit.

21 Q. Let me just jump to light speed.

22 In summary, what is your analysis with respect to
23 this constellation of alleged loans that MineOne has provided
24 the Court with where they say that they are bona fide, genuine
25 loans that must be paid to their creditors ahead of BCB?

1 MS. COLBATH: Objection; leading, Your Honor.

2 THE COURT: Overruled.

3 You may answer.

4 A. I would say the following: These are related parties.

5 I would also say that MineOne and Terra and all of
6 the other entities -- they have not provided any
7 substantiation for these alleged transactions other than
8 providing documents with no way of knowing what date it was
9 actually signed. There's no notarization; there's no
10 contemporaneous communications.

11 And when looking at the factors to evaluate economic
12 substance of a transaction, it would suggest that these
13 amounts are -- are camouflaged equity and, as such, any
14 payment to -- to these related parties which are alleged as
15 creditors but which the economic substance would suggest are
16 more akin to equity holders and given the fact that equity
17 holders have a lower priority compared to lenders or secured
18 lenders, it -- to -- it would appear to be an attempt by
19 MineOne to -- to -- to defraud the likely future judgment
20 creditor, BCB.

21 It appears to be an attempt to extract all of the
22 money out of the entity, out of MineOne, to the related
23 parties and the other investors of MineOne to the detriment of
24 BCB so, when BCB wins this lawsuit at trial in January '25,
25 there will be nothing left for BCB to collect.

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

93

1 BY MR. MURPHY:

2 Q. When were those most recent loans allegedly signed? In
3 relation to the CleanSpark sale.

4 A. Yes. So they allege that the DCA between MineOne and
5 Terra was signed on March 20th. And then there's a series of
6 additional related-party loans that were signed after that
7 point in time.

8 There are the MineOne member loans, the Yu & Jing,
9 the Rising Sun; there's one other entity which I've already
10 mentioned. Those, I believe, were on the 23rd or 24th --
11 I'm sorry.

12 THE WITNESS: I'm sorry, Ms. Colbath, but I'm no
13 longer looking at my notes, so I can't speak to the specific
14 dates.

15 A. (Continuing.) That was the 23rd or 24th. That's a
16 mere -- what is that? -- two weeks, 15 days before the
17 CleanSpark deal was announced. I would guess that MineOne was
18 aware they were negotiating with CleanSpark at that point in
19 time when they decided, "Oh, we need to go clean up all of our
20 loans and put documentation in place."

21 And I would mention this regarding those MineOne
22 member loans: The point in time when those entities actually
23 put the money into MineOne, no -- no loan documents were
24 produced from that point in time. There -- and the reason for
25 that is because there were probably no loan documents. These

1 are documented owners, members of MineOne, putting money into
2 the entity, and there's likely no documentation at the time to
3 document the loan.

4 And a lender -- a true lender, a lender who cares
5 about preserving the principal that they're putting into a
6 company more so than about the future profits of an entity,
7 that entity -- the lender is going to make sure that proper
8 formalities are covered to document their loan.

9 I should also mention on some of these loans I'm
10 talking about there's no interest even included. The loan
11 documents that were produced, the cleanup loan documents that
12 were produced, they said that the interest is waived. A
13 typical lender doesn't waive interest because -- what's the
14 point of lending and doing a loan if you're not going to get
15 interest from that transaction?

16 Q. In addition to what you've been describing, do the MineOne
17 parties assert that MineOne also owes money to Bitmain Georgia
18 for 2,571,000, to Systems Mechanical for 303,675, and to
19 MineOne's attorneys for over 1.5 million?

20 A. Yes, they do.

21 Q. Have they provided any substantiation for those amounts or
22 those alleged loans or debts?

23 A. Very, very little information.

24 As it regards to Bitmain, they pointed us to the
25 surface framework agreement where there's a clause that says

1 here's how much of a prepayment or a security that Bitmain
2 Georgia needs to give to MineOne.

3 And I can tell you that the amount mentioned in the
4 SF agreement -- guess what? It actually does match what's in
5 the accounting records. It's one of the few transactions that
6 match; however, that amount -- which, again, I don't have my
7 notes; I'm not reading from them anymore -- I believe it was
8 around -- around 1.9 million, give or take. I can tell you it
9 was the exact amount if I was reading from my notes.

10 But that 1.9 million, it doesn't match up with the
11 approximately 2.571 million that Rengifo now declares is owed
12 to Bitmain Georgia. And here's the thing: There's no other
13 documentation provided by -- by MineOne to explain the
14 difference -- explain those two amounts.

15 An auditor -- an accountant, an auditor, a CPA would
16 say "You know what? I can't just take your word for these
17 things," especially with all of the related parties taking
18 place. They want to see statements; they want to see
19 invoices; they want to see money moving back and forth to
20 substantiate, to verify that these are things that have
21 actually taken place.

22 I'm unable to verify that these things have taken
23 place based on the very little information that's been
24 provided.

25 Q. Did you find any evidence in the documents provided by

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

96

1 MineOne that they were willing to backdate documents?

2 A. I did. Yes.

3 There are communications that we have received in
4 discovery from Mine- -- from MineOne where it indicates that
5 there is a tendency, a proclivity by the defendants to -- when
6 it suits their interests -- to backdate documents to what
7 serves their interests the best.

8 THE WITNESS: And, Ms. Colbath, if you'd like that
9 reference, I believe it's -- it's -- it's in the script that
10 we sent over to you. So you can go find that and see exactly
11 what I'm talking about.

12 BY MR. MURPHY:

13 Q. Let me jump to one last thing before I call time-out on
14 myself and save the rest for rebuttal.

15 I want to move forward quickly to the CFIUS
16 allegation that was first raised on May 17th in the status
17 conference to the Court? You're aware that there -- MineOne
18 seeks to blame BCB for not getting that CFIUS approval?

19 A. Yes, I am aware of that, that alleged claim.

20 Q. You heard Mr. Astuno testify today that that was not BCB's
21 responsibility but, rather, MineOne's?

22 A. I did hear that.

23 Q. What's BCB's response to MineOne's allegation and
24 criticism of BCB for not seeking that approval with CFIUS?

25 A. I -- I think there's a couple of things I would say to

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

97

1 that.

2 The first is it's -- it's totally untrue. This was
3 never an obligation of BCB. And I will give you some facts of
4 what actually played out.

5 The first time we ever -- BCB, that is -- the first
6 time BCB ever heard of CFIUS on the project was in a
7 November 7th email from Betsey Hale at -- at Cheyenne LEADS.
8 And in this email Betsey provided the report composed up by
9 Microsoft that it had indicated it was providing to CFIUS.

10 And she said, "Hey, you know, heads-up; there's this
11 report out there, this public document. You guys might want
12 to be aware of it."

13 Less than 20 minutes after receiving that email, one
14 of BCB's team members, Neil Phippen, reached out to Rengifo on
15 a messaging platform called WhatsApp, and we had a
16 conversation over there, back and forth, on WhatsApp.

17 The defendants have produced that conversation and --
18 I'm just scrolling through my notes right now so I can give
19 you an exact quote of -- of what was said in that -- here it
20 is. I found it.

21 It says -- so, again, BCB notified immediately
22 Rengifo of this CFIUS situation that Betsey Hale had said.
23 And in that conversation Rengifo said "We are already working
24 on this." And then he also goes on to say that he had --
25 MineOne had "coordinated with all legal to take immediate

1 action."

2 And guess what? After that nothing was ever said
3 about CFIUS to BCB. MineOne never asked BCB to do anything
4 regarding CFIUS. The next time I heard anything about CFIUS
5 was on May 13th in the Presidential divestment order.

6 And I will say this: If MineOne had ever asked BCB
7 to help with CFIUS, to do a filing with CFIUS -- to the extent
8 that BCB even could have done a filing with CFIUS, as -- as
9 Andy Astuno testified earlier -- if -- if BCB could have
10 helped in some way, it absolutely would have. But MineOne
11 never asked BCB to do anything regarding CFIUS.

12 Q. Last question at this point.

13 In BCB's mind and in -- and as you -- as BCB
14 perceives everything the way they stand right now, what will
15 happen if the Court does not grant writs of attachment and
16 garnishment on these 18-plus million dollars of CleanSpark
17 funds?

18 MS. COLBATH: Objection, Your Honor; totally
19 speculative.

20 THE WITNESS: I'm going to answer based on evidence.

21 THE COURT: You may answer.

22 MR. MURPHY: Go ahead.

23 A. Again, I'm not reading from notes so I can't give you
24 specific quotes or specific filings, but I recall that there
25 was a filing within the last week or two where the defendants

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

99

1 represented that the -- Campstool could -- could close as soon
2 as Jan- -- June 27th. Tomorrow.

3 And I -- I can tell you this: We have evidence -- we
4 have hard, actual evidence that as late as June 4th CleanSpark
5 was pushing to close on June 6th at the same time the
6 defendants were saying "No emergency in site." MineOne was
7 trying to close before the originally scheduled June 7th
8 hearing.

9 And in that email from CleanSpark that was produced
10 as part of a subpoena from Republic Title of Texas, the
11 general counsel for CleanSpark says something along these
12 lines -- again, I don't have my notes in front of me -- he
13 says something like "We must do whatever it takes to close."

14 CleanSpark wants to close. They want to close. The
15 defendants have said CleanSpark wants to close so they can
16 build the site out before the ground freezes. That's a
17 legitimate concern. Having been involved in the project, it
18 gets harder when the ground freezes. You want to close these
19 things quickly to start doing the work to build the site as
20 quickly as possible.

21 So I can't guarantee the thing is going to close, but
22 all of the evidence shows -- based upon the statements of
23 CleanSpark, based upon what defendants have represented --
24 that there's a high likelihood that this could close tomorrow,
25 and I take their word for it that it very well may close.

1 And so, Mr. Murphy, to answer your question, what --
2 what I am concerned about, what BCB is concerned about, is,
3 without the action of this Court here today granting these
4 requested writs, that MineOne and CleanSpark will close at
5 least the Campstool transaction tomorrow and then likely
6 proceed to do exactly what Rengifo has indicated in his
7 declaration, and that is to pay around \$4.3 million to these
8 related parties based upon the legal form of documents, which
9 are not substantiated or supported by any of the economic
10 substance.

11 BY MR. MURPHY:

12 Q. And will any of the North Range money ever go to BCB if
13 MineOne has its way and the Court does not issue any writs?

14 A. No. No. Because MineOne has plans for that other money,
15 as well, to other related-party lenders and other unsecured
16 creditors.

17 And I would just say that the defendants have not
18 been forthcoming with the status of that transaction. And one
19 of the reasons why I chose to specifically address what
20 Ms. Colbath said earlier around BCB saying things in its
21 emergency motion or maybe not saying the right thing -- part
22 of the problem is defendants have not been transparent with
23 what's been happening.

24 BCB has had to subpoena third parties to learn
25 information about what has been going on behind their backs.

1 And so we have no idea right now what's happening with CFIUS
2 and MineOne on North Range and if that deal could close
3 tomorrow or that deal still needs another week or two due to
4 CFIUS -- we don't know if CFIUS is going to require all the
5 buildings to be removed or not. It -- that is a giant
6 question mark.

7 But what I can tell you is that Rengifo has indicated
8 in his declaration that, when that deal closes, assuming it
9 closes -- which I'm pretty sure it's going to have to close
10 because President Biden has said this has to happen.

11 When that happens, without a writ in place MineOne is
12 going to distribute that money according to how Rengifo said
13 they were going to do it, and -- and BCB is not on that list.

14 And then there goes all the remaining assets of
15 MineOne. And BCB -- we will be fighting here for the next
16 seven or eight months, we will go to trial, and, if we win at
17 trial, there will be nothing left to collect on.

18 And that -- that's a difficult thing to face after
19 the many years on this project, all of the time, the blood,
20 the sweat, the tears, as well as now all of the legal costs
21 that we have incurred.

22 MR. MURPHY: Your Honor, I have nothing else for
23 Mr. Murphy at this time and like -- would like to reserve the
24 rest of my time to perhaps call him back in rebuttal.

25 MS. COLBATH: Could we get from the court reporter --

23-CV-00079-ABJ

M. MURPHY - DIRECT - MURPHY

102

1 my office is telling me that you've exhausted your time.

2 MR. MURPHY: That's not what I'm hearing. Let's get
3 if from the -- from the Court.

4 MS. COLBATH: Exactly. That's why I'm asking, Pat.

5 THE COURT: 7 minutes 12 seconds.

6 MS. COLBATH: And --

7 MR. MURPHY: We --

8 MS. COLBATH: -- I have -- so that I can allocate my
9 time for my direct, I have how much left?

10 THE COURT: You have an hour and a half.

11 MS. COLBATH: An hour and a half. That's what
12 I thought.

13 MR. MURPHY: We can -- what -- excuse me.

14 What about all that time that we had in the
15 objections that was being -- that the Court said was being
16 credited to Paula, not me?

17 MS. COLBATH: That's --

18 THE COURT: We subtracted it.

19 MS. COLBATH: Yes. Okay.

20 MR. MURPHY: Did we only -- each party only gets
21 90 minutes to start with. There -- it should be something
22 less than 90 minutes, I would think.

23 MS. COLBATH: It's -- let's work on it at a break.

24 So --

25 MR. MURPHY: I thought it was -- 72 minutes left is

23-CV-00079-ABJ

M. MURPHY - CROSS - COLBATH

103

1 what we've calculated it to be. That's why I asked.

2 MS. COLBATH: I have more than 72.

3 **CROSS-EXAMINATION**

4 **BY MS. COLBATH:**

5 Q. Okay. Mr. Murphy, you have reviewed all of the exhibits
6 that were designated by the defendants; correct?

7 A. I have reviewed the -- it was Exhibits 1 through 30, which
8 I -- I believe later may have been -- someone said that one
9 of -- like one of them was missing and so then they got
10 renumbered 1 through 29.

11 I have -- I have --

12 Q. I'm going to stop you because we have a lot of time
13 constraints.

14 And the question was simply have you reviewed all of
15 the exhibits designated by the defendants. Yes or no, please.

16 MR. MURPHY: Does that mean 1 through 46, or does it
17 mean 1 through 30?

18 MS. COLBATH: That means all the exhibits that were
19 designated.

20 MR. MURPHY: That means 1 through 46, Michael.

21 THE WITNESS: I was -- I was trying to clarify that.

22 A. I have reviewed 1 through 29. I have not reviewed the
23 late exhibits that were provided after the June 19th cutoff
24 date.

25 ///

23-CV-00079-ABJ

M. MURPHY - CROSS - COLBATH

104

1 BY MS. COLBATH:

2 Q. Okay. And the June 9th [sic] cutoff date was pursuant to
3 an order where the Judge directed the parties to designate
4 anticipated exhibits; correct? Did you review his order?

5 A. I -- I -- I -- I was informed by my attorney that we
6 needed to -- all parties were required to produce all of the
7 exhibits by that night, and I stayed up and nearly pulled an
8 all-nighter the night before and worked very late in the night
9 on the night of June 19th to produce all of BCB's exhibits.

10 I was under the impression that that was the
11 drop-dead cutoff date for exhibits. If I'm mistaken, then --
12 then I -- I apologize.

13 BY MS. COLBATH:

14 Q. So then, sir, you did not review the promissory notes
15 underlying the Terra bridge loan; correct?

16 A. Those were part of the first -- those were part of
17 Exhibits 1 through -- originally 1 through 30 but now,
18 I believe, 1 through 29.

19 Q. So when you said that there was no substantiation for the
20 Terra bridge loan, you recognize that there were promissory
21 notes; correct?

22 A. So to -- I -- sorry to correct you, Ms. Colbath.

23 But I actually did discuss the loan agreements
24 between Terra Crypto and Terra Global, and I indicated that
25 MineOne has attempted to substantiate the September 22 bridge

1 loan by providing loans between an entirely different party,
2 albeit a related party.

3 Q. Okay. Now, you testified at the beginning of your
4 testimony that you were all in financially.

5 Do you recall that?

6 A. Yes. I am all in financially.

7 Q. Okay. And can you tell me approximately, as best you
8 can -- I recognize you don't have a script for these
9 questions -- how much BCB contributed in dollars to the
10 construction of the North Range facility?

11 A. I can take a stab at this one.

12 Q. I'm looking for a dollar amount, sir.

13 A. Yes. So I would have to clarify, first, the definition of
14 "construction" because, from an accounting standpoint, when
15 I look at it oftentimes -- work that is performed by vendors,
16 oftentimes that's capitalized as part of a project's cost to
17 be able to then be expensed over time.

18 And so, if you're asking me what did BCB contribute
19 to the -- the construction of the buildings, well, I can tell
20 you that BCB was paid \$450,000 in Phase 1, and a substantial
21 portion of that \$450,000 was paid to BCB's employees to be on
22 the site and to participate in the building of the site.

23 So BCB -- in my eyes, it spent its money to
24 contribute to the capital assets that MineOne would have on
25 its books.

23-CV-00079-ABJ

M. MURPHY - CROSS - COLBATH

106

1 Q. Sir, in -- in Phase 1 of the project the MineOne parties
2 paid BCB \$450,000; correct?

3 A. They did.

4 Q. Now, did BCB contribute a dime to the construction of the
5 facilities at the North Range? And I'm not referring to money
6 that MineOne paid to third parties. I want to know what came
7 out of BCB's bank account for the construction of the site.

8 A. Yes. There is an amount, Ms. Colbath. So when -- when
9 MineOne -- when -- has falsely alleged that there are no
10 remaining invoices or reimbursements that have not been
11 covered back to BCB, well, there is an invoice for \$12,000, a
12 portion of which was related to the North Range project where
13 MineOne did not reimburse BCB for expenses that BCB fronted
14 for MineOne.

15 So to answer your question, yeah, BCB did pay money
16 for things related to the North Range project out of pocket
17 that it was not reimbursed for. So BCB has spent money.

18 Q. How much?

19 A. I -- I cannot recall off the top of my head. I -- I have
20 to go back and look at -- at accounting records and statements
21 to get you a -- a number on that.

22 Q. Okay. At some point in March of 2023 BCB left the
23 North Range site; correct?

24 A. BCB demobilized from the project after MineOne breached
25 its contract.

1 Q. So, sir, in March of 2023 BCB picked up and left the
2 North Range site; right?

3 MR. MURPHY: Objection; duplicative, repetitive,
4 argumentative. Misstates the witness' testimony.

5 MS. COLBATH: I asked a simple yes-or-no question.
6 The witness did not answer it. And so I'm asking it again.

7 A. Ms. Colbath, in -- in March of '23, after BCB had just
8 worked for two months without being paid and -- when having
9 asked for payment and invoicing MineOne for payment -- and
10 MineOne refused to make that \$90,000 payment and then having
11 been informed that Wylie's team had replaced us in Phase 2 and
12 we'd been relegated to menial work in Phase 2 and we weren't
13 going to get any money from Campstool -- with all of that laid
14 out in front of us, BCB decided -- and realized that its
15 contract had been breached and we weren't getting paid and
16 that MineOne had positioned this amendment in a -- making a
17 no-choice option.

18 So BCB -- what we did -- you may call it walked off
19 the site or left the project or whatever you may have it.

20 But after the contract was breached, BCB informed
21 MineOne the contract was breached, and then we left the
22 project, as you said. I like to think of it as we
23 demobilized. But we didn't stop working on the project at
24 that point.

25 BCB then sent over 30, maybe 35 emails to MineOne's

1 vendors, letting them know that BCB had demobilized -- it put
2 both MineOne representatives and the vendors on the same
3 email. In some of the emails it mentioned, "Hey, here's how
4 much is owing." It let everybody know about the transition.

5 And I can tell you this: The night we breached or --
6 I'm sorry. The night -- let me clarify.

7 The night Mine- -- the day that MineOne -- the day
8 MineOne breached on March 15th -- no; I'm sorry -- on the 13th
9 and then BCB left the site on the 15th, when we filed the
10 Chancery Court lawsuit -- I can tell you on that night
11 I stayed up until 3:30 or 4:00 in the morning drafting an
12 email to Black Hills and to MineOne explaining everything that
13 needed to happen to move forward with the project.

14 So when you make claims or when the defendants make
15 claims that we just left the project and walked away, that is
16 wholly false because I can tell you -- I still remember
17 standing --

18 MS. COLBATH: Your Honor, I -- this is not
19 acceptable. I have to cut the witness off because he's
20 filibustering to use up my time.

21 I'm being very careful to -- to ask him very direct,
22 almost yes-or-no questions, and he's just using it as a
23 platform to wind out my clock and it's inappropriate.

24 I would ask you to caution the witness to answer the
25 question or say he can't.

23-CV-00079-ABJ

M. MURPHY - CROSS - COLBATH

109

1 THE COURT: Okay.

2 Listen to the question carefully. And then answer it.

3 MS. COLBATH: Okay.

4 BY MS. COLBATH:

5 Q. I think you just said you left the site on March 15th,
6 2024. Correct?

7 MR. MURPHY: Not 2024. Misstates the evidence.

8 MS. COLBATH: I -- I stand corrected.

9 March 15, 2023.

10 A. BCB demobilized from the site on that date but with the
11 qualifications that I have presented.

12 BY MS. COLBATH:

13 Q. Now, you -- during direct you looked at what was marked as
14 Plaintiff's Exhibit 15, the development, hosting, and services
15 agreement.

16 Do you recall that?

17 A. Yes. I -- I do recall --

18 Q. Was (indiscernible) the agreement --

19 THE COURT REPORTER: I didn't hear the question.

20 (Reporter seeks clarification.)

21 THE WITNESS: I'm sorry. What?

22 BY MS. COLBATH:

23 Q. Are you familiar with the agreement?

24 A. Yes. Yes. I don't have it memorized but I am . . .

25 Q. And in paragraph 6.2 of what's been marked as Plaintiff's

1 Exhibit 15 is set forth BCB's Phase 1 obligations; correct?
2 A. Let me -- I'm pulling it up right now so I can go to
3 Section 6.2. Please bear with me just -- I don't have all the
4 sections memorized yet. You would think that I would after
5 all of this litigation.

6 Okay. I'm on 6.2 of the DHS agreement.

7 Q. And 6.2(b) required BCB to obtain, quote, "all permits and
8 licenses, including construction permits for buildings and the
9 facilities' electric infrastructure, environmental licenses
10 and permits, operations permits, and licenses (including legal
11 and other) required or recommended to comply with applicable
12 law and regulation"; correct?

13 A. That is what it states, correct.

14 Q. Okay. And subparagraph (d), BCB was required to perform,
15 quote, "all other reasonable related activities within the --
16 within its control to enable MineOne and other users of the
17 facilities to conduct digital currency mining activities in a
18 proper and timely manner to ensure that CFC0 occurs not later
19 than 31 October 2022."

20 Was that that part of BCB's responsibilities at the
21 North Range?

22 A. Yes. Those were part of BCB's responsibilities.

23 Q. Okay.

24 A. Thank you for quoting the actual contractual language.

25 Q. And -- and the reference to CFC0 required that BCB have

23-CV-00079-ABJ

M. MURPHY - CROSS - COLBATH

111

1 the site -- "commencement of full commercial operation";
2 correct?

3 A. I -- I believe that is what "CFC0" means but --

4 Q. Okay.

5 A. -- so my --

6 Q. Thank you. Thank you.

7 MR. MURPHY: No, don't cut him off.

8 Your Honor, I object to her cutting off the witness.

9 THE COURT: Overruled. It was a yes-or-no question.

10 BY MS. COLBATH:

11 Q. And --

12 A. Yes. CFC0 --

13 Q. And that commencement of full commercial operation meant
14 the utilization of 98 percent of the maximum available power
15 at the North Range facility; correct?

16 A. I'm -- where is that defined at, Ms. Colbath?

17 Q. It's in paragraph 5.1.

18 A. Yes. That is what the words of the contract say.

19 Q. Okay. Now, you'll agree with me that the North Range site
20 was intended to have 10 modular data centers built on it;
21 correct?

22 A. That is correct.

23 According to the -- MineOne's agreement with CEGEN.

24 Q. Okay. Now, as of March 31, 2022, was there even one
25 modular data center that was operational?

23-CV-00079-ABJ

M. MURPHY - CROSS - COLBATH

112

1 A. On --

2 MR. MURPHY: Pardon me --

3 A. (Continuing.) -- on March 31?

4 BY MS. COLBATH:

5 Q. On the -- on October 31, 2022, the deadline set forth in
6 your contract with MineOne, was there even one modular data
7 center that was operational?

8 A. No. There were not. And it was very frustrating --

9 Q. That was enough. You've answered it.

10 Now, on November 30th, 2022, of the 10 modular data
11 centers that were supposed to be operational by October 31,
12 2022, did you have 1 that was operational?

13 A. I -- no. I don't believe any were operational on that
14 date.

15 Q. And come December -- we're now two months after the
16 deadline set forth in paragraph 6.2(d) for you, BCB, to have
17 the site "fully commercially operational" -- was there even
18 1 of the 10 modular data centers operational?

19 A. No, there were not.

20 Q. Okay. And that was the case come January 31; right?

21 Still none?

22 A. Paula, you're absolutely right. None of them were
23 operational at the time.

24 Q. -- (indiscernible) three --

25 A. You are right. Yes, none of them.

23-CV-00079-ABJ

M. MURPHY - CROSS - COLBATH

113

1 What's your point?

2 Q. Okay. And there should have been -- under the contract,
3 by October 31, 2022, there should have been 10 that were
4 operational; correct?

5 A. That is what MineOne wanted so long as BCB
6 (indiscernible) -- stayed within--

7 Q. That's what the contract provides, sir. Correct?

8 A. The -- the con- -- the contract -- I -- I refer back to
9 the --

10 Q. According to (d), sir.

11 A. I refer to the contract in BCB's actual contractual
12 obligations, to do things within its control to deliver by
13 that date.

14 I -- I -- I -- I believe -- and I feel that I have
15 to --

16 Q. No, I'm not asking what you believe. These are yes -- yes
17 or nos, and I -- we've just got to be conservative with the
18 time.

19 Now, you've acknowledged you walked off or left the
20 site on March 15th, 2023; correct?

21 A. BCB demobilized on March 15th.

22 Q. And as of the day you packed up all the computers and your
23 papers from the trailer that was on the construction site,
24 there wasn't one modular data center that was operational;
25 correct?

23-CV-00079-ABJ

M. MURPHY - CROSS - COLBATH

114

1 A. They were not operational by that date.

2 Q. Okay. Now, did BCB -- you or anyone at BCB -- ever make a
3 disclosure to the Committee on Foreign Investment concerning
4 MineOne's acquisition of land in Cheyenne, New York [sic]?

5 A. No. MineOne never asked us to do that.

6 Q. Now . . . did anyone at BCB ever make disclosure to the
7 Committee on Finance -- the Committee on Foreign Investment in
8 the US regarding the MineOne parties' plans to build a digital
9 currency mining facility?

10 A. No, BCB did not do that.

11 Q. At any time prior to the date that you commenced your
12 first lawsuit in Chancery Court, did anyone at BCB contact
13 Mr. Astuno, the CFIUS expert who testified today who was your
14 brother's roommate?

15 A. I'm sorry. What were the -- the dates and the timing on
16 that question?

17 Q. Prior to the date that you commenced your Chancery Court
18 proceeding in March of 2023, did you or anyone at BCB contact
19 your brother's roommate, Mr. Astuno, the -- the CFIUS expert
20 from today?

21 A. No, ma'am, we did -- we did not.

22 Q. Okay. Now, initially, you had discussions with the
23 MineOne parties that you could actually complete the
24 construction by August of 2022; correct?

25 A. Those were preliminary timelines based on information

23-CV-00079-ABJ

M. MURPHY - CROSS - COLBATH

115

1 available at the time.

2 Q. Yes. So the answer is, "Yes, we had conversations with
3 MineOne very early on that we could actually complete the
4 construction by August of 2022"; correct?

5 MR. MURPHY: Objection. It's argumentative, it's
6 duplicative, and it misstates slightly the witness' testimony.

7 It's not -- it's not even a question. It's just a
8 speech at the end of an answer. I object.

9 BY MS. COLBATH:

10 Q. So in --

11 THE COURT: It's cross-examination.

12 BY MS. COLBATH:

13 Q. -- 2022 --

14 MS. COLBATH: I'm rephrasing it.

15 BY MS. COLBATH:

16 Q. Sir, in early 2022 did you have conversations with
17 representatives of the MineOne parties that BCB could complete
18 construction of the 10 modular centers by August of 2022?

19 A. It was a preliminary target date based on information
20 available at the time when there were no agreements even
21 signed. We didn't even know at that point in time if
22 agreements would get signed.

23 No contractors or vendors had been --

24 Q. No question pending.

25 Now, since BCB walked off the project in March of

1 2023, has BCB received any revenues from any source?

2 A. Let me think about that.

3 No. I don't believe we have.

4 Q. And you -- you've reviewed, sir, the counterclaims that
5 have been asserted by the MineOne parties against BCB?

6 A. I -- yes. I believe I have. But they're not all fresh in
7 my mind right now.

8 Q. Okay. And you've reviewed the initial disclosures that
9 were filed by the MineOne parties setting forth the damages
10 that they seek in respect to those counterclaims from BCB?

11 A. I -- I believe you're referring to the totally bogus and
12 overstated and -- and -- and . . . statements with no basis or
13 evidence whatsoever, I think -- yes. If that's what you're
14 referring to, then, yes, I did review that.

15 And I -- frankly, I laughed at it because it was so
16 ridiculous and outlandish, the numbers that MineOne was
17 claiming for damages.

18 Q. And when the MineOne parties obtain their judgment against
19 BCB, what financial assets does BCB own to satisfy that
20 ultimate judgment?

21 A. BCB currently -- we have very little assets because all
22 the work that we did before the DHS agreement to get the power
23 contract, all the development work of the project, that all
24 got deferred to Phase 2 and, you know, we got breached.

25 Your -- your clients breached on us, and we never got

1 any of the money that we had worked for so hard to get. So,
2 because of that, we -- we don't really have much money left,
3 Ms. Colbath.

4 Q. Well, you were -- you were paid \$450,000 for your efforts
5 from June 2022 through the day you walked off the North Range
6 site; correct?

7 A. Yes. MineOne did pay \$450,000 for Phase 1.

8 Q. And -- and you never issued any type of default notice to
9 the MineOne parties under the -- the development, hosting, and
10 services contract; correct?

11 A. We did not issue a default notice because an event -- we
12 don't believe an event of default took place.

13 This was an anticipatory repudiation, a breach of
14 contract. I don't believe there was an event of default that
15 specifically spoke to that.

16 Q. You don't have a law degree, do you?

17 A. No. No, ma'am, I do not.

18 Q. Okay. Because today probably a dozen times you've used
19 the expression "anticipatory repudiation."

20 What -- what do you understand that to mean in a
21 legal sense?

22 A. It's when one party takes an action that -- that
23 frustrates or prevents the other party from performing its
24 contractual duties as part of a contract.

25 And that's what we believe MineOne did, is they took

1 action to repu- --

2 Q. I asked you what the meaning was as you used it. That --
3 please.

4 A. Yes. I understand.

5 Q. Now, at some point in time you participated in the
6 preparation of a budget for the North Range site that totaled
7 \$18 million in construction costs; correct?

8 A. We did work on a budget with -- with MineOne, Erick
9 Rengifo, and Jiaming Li. I cannot recall off the top of my
10 head what that exact number was for Phase 2.

11 Q. Do you have any notion, as you sit here today, what the
12 final construction cost was for the North Range site?

13 A. Yeah. Based upon my recollection at the time, which is
14 now over a year ago, I remember knowing right towards -- or
15 thinking right at the end of the project -- you know, like a
16 month or two before it ended, before your clients hired
17 Systems MEC, a very expensive contractor -- I remember at that
18 time thinking, "Wow, we are getting really close to the
19 budgeted amount," and BCB was doing everything it could, all
20 reasonable related activities within its control, to help keep
21 that cost down.

22 We assisted your clients in -- in doing an amended
23 agreement with CEGEN to help keep that cost within budget, and
24 I -- I -- I -- what I do know is that we were coming up on --
25 on that limit of the budget, Systems came in, started charging

1 a whole bunch of money to get the site done. And I remember
2 thinking at that time, "Oh, wow, they're going over budget on
3 this project."

4 But I would just note that if CEGEN had performed
5 according to its terms, it was much more likely to come in
6 within budget. Truly, CEGEN's breach of the agreement with
7 MineOne forced MineOne to have to go hire a much more
8 expensive contractor, Systems MEC, to complete the project and
9 Systems took them way over -- way over budget.

10 Q. Would you be surprised to learn that the final
11 construction costs were over budget by \$9 million?

12 A. I would have to look at the documentation to determine
13 whether or not I would be surprised by that or not.

14 Q. Well, you --

15 MR. MURPHY: If you have that, I'd -- I'd ask that
16 you provide that.

17 MS. COLBATH: Excuse me. Do you have an objection to
18 the question? If not, I would appreciate you not making
19 statements --

20 MR. MURPHY: I object --

21 MS. COLBATH: -- in the middle of the examination.

22 MR. MURPHY: I do object. There's a lack of
23 foundation.

24 And if you're going to say that it was 9 million over
25 budget -- I think, Your Honor, she should show us that

23-CV-00079-ABJ

M. MURPHY - CROSS - COLBATH

120

1 document so the witness can look at it.

2 MS. COLBATH: Let's look at Murphy Tab 11.

3 THE WITNESS: I'm sorry. What are we looking at?

4 MS. COLBATH: One of my colleagues, I think -- if
5 I've got the right document -- is going to put a document up.
6 I'm going to ask you to take a look at it.

7 THE WITNESS: Okay.

8 BY MS. COLBATH:

9 Q. While -- while he's doing that, let me ask you -- you,
10 during your direct, had a -- testified as to the MineOne
11 defendants' general ledger and other financial records;
12 correct?

13 A. I -- I did. I did testify to the general ledger provided
14 by MineOne.

15 Q. All right. So -- okay. We can take this down. That's
16 not the document I was expecting.

17 MS. COLBATH: Okay. I'm going to save the remainder
18 of my time for my client.

19 MR. MURPHY: Your Honor --

20 MS. COLBATH: Maybe recross if necessary but --

21 MR. MURPHY: Yeah. May I be allowed to ask a few
22 more questions of Mr. Murphy, Your Honor?

23 THE COURT: Yeah.

24 MR. MURPHY: On my time.

25 THE COURT: Yeah. Sure.

23-CV-00079-ABJ

M. MURPHY - REDIRECT - MURPHY

121

1 MR. MURPHY: Okay. Thank you.

2 **REDIRECT EXAMINATION**

3 **BY MR. MURPHY:**

4 Q. Mr. Murphy, with respect to the operational date that you
5 talked about earlier, could anyone have reached the completion
6 date by either October 31 or November 22 on this project?

7 A. No. It would not have been possible.

8 And the reason for that -- I'll just give you the
9 most obvious example.

10 Black Hills Energy was required to provide power by,
11 I think, November 10th or November 11th, and Black Hills
12 Energy wasn't able to provide power until then. They provided
13 notice to MineOne that they -- Black Hills -- had done all of
14 the work on its side to deliver the power. They notified
15 MineOne of that in February -- February 22nd of '23.

16 So it would have been impossible for any mining to
17 have taken place before February 22nd due to one of MineOne's
18 vendors, Black Hills in this case, not doing the work
19 Black Hills needed to do to have the power ready.

20 I don't want to throw Black Hills under the bus. If
21 I -- just to be a little precise, the truth -- one of -- the
22 true issue, the big problem that MineOne conveniently doesn't
23 talk about anymore, is a company called CEGEN, the entity
24 contracted to build the 10 data centers.

25 CEGEN -- CEGEN breached its agreement with MineOne.

23-CV-00079-ABJ

M. MURPHY - REDIRECT - MURPHY

122

1 MineOne wanted BCB to help collect money from CEGEN.

2 Nobody liked CEGEN. CEGEN was understaffed. They
3 didn't deliver the materials on time. And it's only now, when
4 MineOne is involved in litigation against BCB, that BCB gets
5 blamed for all of the problems. But during the project this
6 was CEGEN's fault. CEGEN was slow; CEGEN was the cause of the
7 issues.

8 Ms. Colbath said that, you know, BCB -- or she's
9 trying to insinuate that BCB had an obligation to deliver
10 everything by October 31st, but we have to focus on things
11 within BCB's control. BCB could not control the performance
12 of CEGEN. BCB could not control the performance of
13 Black Hills. BCB could not control the performance of
14 MineOne's other vendors.

15 And upon closer inspection, one would actually see
16 these other vendors had problems that led to the delays. BCB
17 did everything within its control to -- to do it.

18 Q. But what party to this lawsuit -- what defendant -- had
19 the contractual duty to ensure the -- the fully operational
20 date?

21 A. That was Terra Crypto, Inc., in the CS agreement.

22 Q. What was the reason you and I worked on a script for all
23 your testimony today?

24 A. It was --

25 MS. COLBATH: Objection, Your Honor. I -- I didn't

23-CV-00079-ABJ

M. MURPHY - RECROSS - COLBATH

123

1 inquire into that at all. It's beyond the scope of my cross.

2 THE COURT: Sustained.

3 MR. MURPHY: I'd reserve the rest of my time. Thank
4 you, Judge.

5 THE COURT: Okay.

6 MS. COLBATH: Just a couple on those last questions,
7 Mr. Murphy.

8 **RECROSS-EXAMINATION**

9 **BY MS. COLBATH:**

10 Q. When you -- when BCB determined that it couldn't comply
11 with its contractual obligation under the development,
12 hosting, and service agreement in 6.2(d) -- that's the --
13 that's the provision that has the required October 31, 2022,
14 date -- did you go to the MineOne parties and ask for an
15 amendment or modification to the contract?

16 A. You led me into that question indicating that --

17 Q. Yes or --

18 A. -- you felt as though I breached, as if BCB breached.

19 And, Ms. Colbath, the answer to your question is that
20 we had at least thrice weekly calls with the defendants. And
21 I remember that because they were all hours of the day --
22 5:00 a.m. in the morning -- due to several of the defendants
23 calling in from China. They would take place at 8:00 or
24 9:00 at night.

25 They were well informed of the status of the project,

1 and they knew everything that was happening. All parties knew
2 what was happening, and your clients were aware that other
3 parties were not fulfilling their obligations and that was
4 going to push back the -- the completion date of the project.

5 Q. You -- BCB was the project manager of the construction;
6 correct?

7 A. BCB was named as the project manager.

8 Q. Okay.

9 A. It's specific contractual obligations.

10 MS. COLBATH: I'd like to show the witness
11 Defendants' Exhibit 47.

12 THE WITNESS: I -- I don't believe I have reviewed
13 that. It didn't come in in time.

14 MR. MURPHY: Objection to --

15 MS. COLBATH: I'm using -- I'm using it for purposes
16 of my recross, and I didn't have to produce to your father my
17 cross-examination documents. And he just asked you some
18 questions which triggered this document.

19 So if we could show the witness --

20 MR. MURPHY: Your Honor, I -- time-out.

21 I object to that. That's one of their late-listed
22 exhibits that we moved to strike with the Court yesterday,
23 Exhibits 30 through 47 were all late, and we've moved the
24 Court to strike those.

25 She should not be allowed to use those. Even if she

23-CV-00079-ABJ

M. MURPHY - RECROSS - COLBATH

125

1 doesn't admit them, she shouldn't be allowed to use them.

2 That was the -- just the gist of our motion.

3 MS. COLBATH: And, Your Honor, I'm using it for
4 recross based on something that Mr. Murphy elicited. So I --
5 I never was required to -- to disclose all of my cross-
6 examination materials.

7 MR. MURPHY: Oh, that is so not cross-examination.
8 You listed 30 through 47 late.

9 And never said why.

10 THE COURT: Well, it's not being offered into
11 evidence in this case. If your client's memory is refreshed
12 as a result of the use of the -- her showing him the exhibit,
13 fine. If not, that's fine, as well.

14 She'll have to live with the answer.

15 MS. COLBATH: So if it's -- it's Murphy Tab 5, if we
16 could have that brought up, and I'm going to ask the witness
17 to identify it for the record.

18 It appears to be an email to Mr. Murphy and his other
19 two founding members from Jiaming Li dated March 16th, 2023.

20 BY MS. COLBATH:

21 Q. Do you recognize this email, Mr. Murphy?

22 A. Was this in response to another email?

23 Q. You're welcome to look at the entire document. I --
24 I believe it was in response to an email that you sent.
25 I'm going to focus you on -- because of time constraints --

1 the first page and -- page and a half -- of the document.

2 In or about March 16th, 2023, the MineOne parties
3 told BCB that they had not complied with that provision of the
4 contract, that Section 6.2(d); correct?

5 A. Can you show me where it says that, Paula?

6 Q. Sure. You can start with --

7 A. You did refer to --

8 Q. -- with --

9 A. I think you did. I think -- if I -- if I may, this
10 appeared --

11 Q. You've asked me to clarify so let me -- let me point you.

12 It starts "Let's discuss this in a call, but your
13 basic premises completely ignore what has happened until now.
14 We are delayed since the beginning of October" -- question --
15 exclamation point. "This is a catastrophe for us. We have
16 lost revenues, comma, clients, comma, investors, and our
17 reputation is heavily damaged."

18 Then skip down. In the middle of the second
19 paragraph, "You have not delivered what we were expecting by
20 the end of October, and, as such, we have clearly paid more
21 than is supposed to have been paid, given the status of the
22 facilities."

23 Then if you keep going down, "You need to" -- "As you
24 should recognize, without him and his team, the situation
25 could have been terrible at this point. You need to recognize

1 that your role as a PM" -- short for "project manager" -- "has
2 not been good. You can blame anyone, but the role of the
3 project manager is to be in charge and solve issues. The
4 project manager is responsible for the good and bad things
5 that happen. You cannot escape that. Otherwise, why should
6 we have a project manager if the project manager does not have
7 the responsibility to have the facilities up and running?"

8 So my question to you is, you were -- BCB was told
9 expressly by the MineOne parties that they hadn't met the
10 October 31, 2022, deadline and that that had created a
11 catastrophe; correct?

12 A. You just said so much stuff, Paula, that is incorrect.

13 I mean, you quoted this email, but the claims of this
14 email are so incorrect I don't even know how to respond to
15 your question because, if I responded to it, it would be like
16 I was admitting to these things.

17 Q. Okay. So . . .

18 THE COURT: So your testimony is "incorrect";
19 correct?

20 THE WITNESS: Can she repeat the question again?

21 BY MS. COLBATH:

22 Q. Well, let me just ask you.

23 Did -- did you receive the email?

24 A. I believe this was a response to the email I sent to
25 Li and Rengifo when we informed them that MineOne had breached

23-CV-00079-ABJ

M. MURPHY - RECROSS - COLBATH

128

1 the contract. I believe (indiscernible) --

2 Q. You --

3 A. -- the response if I recall now.

4 Q. So -- so you did receive this email; correct?

5 A. I believe I did, yes. I haven't looked at it for a while,
6 but I believe I did receive this.

7 MS. COLBATH: Okay. I'm going to ask that it be
8 moved into evidence as my first exhibit.

9 MR. MURPHY: That's a --

10 MS. COLBATH: Is there objection?

11 MR. MURPHY: Yeah, there is an objection. That's
12 just hearsay. Jiaming Li is not here to testify about it.

13 THE COURT: The objection is sustained. And it was
14 not a document that was produced --

15 MS. COLBATH: I -- I --

16 THE COURT: -- in a timely way.

17 MS. COLBATH: Your Honor, I would like to be heard on
18 that because I'm not introducing it for the truth of
19 everything in it. I'm introducing it that these things were
20 said at -- at -- in March of 2023 to BCB.

21 THE COURT: Well, it was said after the parties were
22 at swords' point.

23 MS. COLBATH: I'm sorry. I -- I missed the end part.

24 THE COURT: "Swords' point."

25 MS. COLBATH: Okay. It -- it --

1 THE COURT: There was a dispute that existed then
2 that we're still talking about. And you're talking about this
3 applying and having been given -- as information provided on
4 October 31 and November 22nd.

5 MS. COLBATH: Correct. I'm -- I'm introducing it
6 just for the sole purpose of showing that my clients did
7 communicate issues, not the truth of -- of all of the
8 complaints in here but that they were communicating at this
9 time with BCB.

10 BCB has testified that they walked off the site on
11 3/13 --

12 THE COURT: Yes.

13 MR. MURPHY: Object --

14 THE COURT: I'm not going to argue with you,
15 Ms. Colbath. I've -- I've ruled on it.

16 MS. COLBATH: Okay.

17 THE COURT: This document was produced after the
18 Chancery Court lawsuit was filed.

19 MS. COLBATH: Okay. I . . . I'm -- I'm -- concluded
20 my recross.

21 MR. MURPHY: I would only -- I would only call
22 Andy Astuno very quickly for a quick rebuttal as a -- this
23 final witness, plaintiff's, if he -- if Mr. Astuno can rejoin
24 the call. I hope he can.

25 MS. COLBATH: Could we get from the court reporter --

23-CV-00079-ABJ

M. MURPHY - RE CROSS - COLBATH

130

1 I had understood that you had exhausted your time.

2 THE COURT: He has 4 minutes and 15 seconds.

3 MS. COLBATH: Okay.

4 MR. MURPHY: Okay.

5 THE COURT: And actually --

6 MR. MURPHY: I don't see Mr. --

7 THE COURT: Actually, I want to tell you, in looking
8 at our clock, in terms of time that you used, you were right,
9 Mr. Murphy. The time that Ms. Colbath had was about
10 72 minutes.

11 So we have been keeping track.

12 MR. MURPHY: Thank you, Judge.

13 And I think most of that -- she spent 14 minutes and
14 7 seconds crossing Andy Astuno.

15 So I don't see Andy Astuno on the call, so we'll have
16 to wait on --

17 THE WITNESS: Hello. This is Andrew Astuno coming
18 back online here.

19 I -- I apologize. I -- I am in a quiet place. I'm
20 in my car but I'm happy to continue my testimony with the
21 Court's permission.

22 MR. MURPHY: Well, I'll leave that up to the Court.
23 I just have a -- one or two questions for him, Your Honor.

24 THE COURT: Please ask the questions.

25 ///

23-CV-00079-ABJ

ASTUNO - FURTHER DIRECT - MURPHY

131

1 ANDREW ASTUNO, PLAINTIFF'S WITNESS, FURTHER DIRECT EXAMINATION
2 BY MR. MURPHY:

3 Q. Mr. Astuno, Ms. Colbath keeps saying today that you and
4 Sean Murphy, my middle son, were roommates.

5 What is the situation with that? Were you roommates
6 or not?

7 A. For one year Sean Murphy resided in my home in Denver,
8 Colorado, approximately 10 years ago. We were introduced by a
9 mutual contact through the Notre Dame Club of Denver. But
10 I do think that it's important to clarify that by no means did
11 we have some long-standing relationship as cohabitants or
12 roommates, and, certainly, we do not live together currently.

13 That is certainly not the case. In fact, I do not
14 know where Sean Murphy currently lives.

15 MR. MURPHY: Thank you.

16 All right. That's all I have for Mr. Astuno,
17 Your Honor.

18 THE COURT: All right. You've got 3 minutes and
19 24 seconds.

20 MR. MURPHY: I don't -- I want to save that for
21 cross-examination or final rebuttal.

22 THE COURT: Very well.

23 MS. COLBATH: Okay. Pat, you're done with your case?

24 MR. MURPHY: Yes, I am. Thank you.

25 MS. COLBATH: Okay.

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

132

1 So the MineOne defendants would like to call Erick --
2 Dr. Erick Rengifo.

3 THE COURT: Please raise your right hand and be
4 sworn.

5 (Witness sworn.)

6 THE WITNESS: Yes.

7 **ERICK RENGIFO, PhD, DEFENDANTS' WITNESS, DIRECT EXAMINATION**
8 **BY MS. COLBATH:**

9 Q. Okay. Dr. Rengifo, could you give Judge Johnson a -- a
10 brief summary of your work history and educational background.

11 A. Of course.

12 So I'm a PhD in economics. And my specialization is
13 in finance and econometrics. I did my PhD at (indiscernible)
14 Universite Catholique de Louvain in Belgium --

15 THE COURT REPORTER: Excuse me.

16 (Reporter seeks clarification.)

17 BY MS. COLBATH:

18 Q. Mr. Rengifo, so we have a court reporter, and it's going
19 to be very important that you speak loudly, slowly, and
20 enunciate because on the Zoom -- and it's also -- we've been
21 at this for a while.

22 So if you can keep your voice up so that the court
23 reporter and -- and all -- everyone can hear and try to speak
24 a little slower.

25 A. Perfect.

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

133

1 Do you hear me now?

2 Q. Yes.

3 A. Perfect.

4 So I'm Erick Rengifo. I'm a PhD in economics.

5 I have specialized in finance and econometrics. I did my PhD
6 in Universite Catholique de Louvain. It's in Belgium. I have
7 a master's degree also in economics, one in finance, and one
8 in quantitative methods.

9 My experience -- my current job is also being a
10 professor, a full professor at Fordham University, economics
11 department.

12 I have been -- I'm a senior consultant of TABS Group
13 that is now a (indiscernible) international. I have done a
14 lot of consulting in terms of trade, equity trade, with help
15 of -- I do -- Minaya Corporation that is doing equity trading.
16 We do investments --

17 THE COURT: I didn't understand that last part.

18 Something about trading.

19 THE WITNESS: Yes.

20 A. (Continuing.) So we have a corporation that does a --
21 stock trading in New York. We have a corporation that is
22 doing, basically, high-frequency trading. We have operations
23 also in Peru. We do a -- some transactions related to world
24 refinery; we have investments in the -- the jewelry industry.
25 And we also have investments in technology for crypto trading

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

134

1 and equity trading.

2 THE COURT: And you talk about "we." Who's the "we"?

3 THE WITNESS: It's myself, Erick.

4 THE COURT: You alone?

5 THE WITNESS: With Jiaming Li. That is -- we're
6 one-on-one partners.

7 THE COURT: So Mr. Li is your -- your colleague?

8 THE WITNESS: Partner in one of -- yes. Partner in
9 one of the -- in some of the ventures that we have, that's
10 correct.

11 THE COURT: Thank you.

12 BY MS. COLBATH:

13 Q. Now, how was MineOne introduced to BCB?

14 A. It -- we were looking -- after -- what happened in May
15 2021 was China basically banned crypto miners. So all --
16 basically -- all miners were looking for opportunities outside
17 China.

18 And we arrived to -- to USA, and we helped
19 Mr. Wang to arrive to USA for miners. And we were looking for
20 opportunities in Texas; we were looking in Georgia, Indiana.
21 We also looked for opportunities in Canada.

22 And then we simply start talking with our colleagues
23 and telling them we're interested on -- on building facilities
24 for crypto mining. And we go -- we got a lead, and this lead
25 put us in touch with Michael Murphy from BCB.

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

135

1 Q. Now, BCB has claimed that MineOne did not let BCB know at
2 the start of the discussions that BCB was dealing with Chinese
3 investors.

4 A. Well, it was always -- yes.

5 Q. Is that correct? And could you comment on that?

6 A. Yeah. It's not correct.

7 We always presented ourselves having Chinese
8 investors coming with us because we -- they were expelled from
9 China. And that we were looking for opportunities in -- in
10 the USA, you know.

11 And from Day One -- when we visited, also, the --
12 our -- the facilities of -- where -- we did a tour. Michael
13 did a tour -- Michael and Neil, I think, did a tour for us, a
14 very short tour in the facilities.

15 Jiaming Li was with me. And it was clear -- and
16 Jiaming Li clearly stated that he was -- he was from China; he
17 was a point of contact from China.

18 Q. Now, there's been -- there was -- has been some discussion
19 of contracts with Black Hills Energy, and I don't know if you
20 were listening in earlier.

21 But could you explain to the Court the importance of
22 the electrical contracts with regard to digital currency
23 facilities and how they work?

24 A. Yes.

25 Well, when we are talking about the crypto mining

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

136

1 facilities -- so the -- the business of creating data centers
2 for allowing other people to run the miners -- you're talking
3 about an industry that is very careful about the cents. So
4 in -- in general, what we are receiving now is 8 cents
5 per kilowatt. That's our revenue per kilowatt.

6 So having the price as low as possible -- the energy
7 price as low as possible -- it is a must. Energy price more
8 or less represents between 60 to 70 percent of the total
9 price, total expenses of a mining facility.

10 So, for us, price is a crucial element in order to --
11 to do this investment.

12 Q. And did there come a point in time when you reviewed any
13 contracts with Black Hills Energy?

14 A. Yes. We -- we reviewed the contract that Michael provided
15 to us, and immediately what caught our attention -- and we
16 discussed this pretty intensive with Michael -- was that this
17 contract was completely particular in a sense -- not in all
18 sense but in a bad sense.

19 So they have a -- a minimum price of 5 cents, and
20 this price was increasing in time. I think it was 525, 550 in
21 the next three years, and they stayed constant for the next --
22 the last two years. So they have a minimum; they have a floor
23 of 5 cents.

24 So this was -- in our view, this was insane. And
25 Michael himself, in a couple of emails and discussions, he

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

137

1 acknowledged this was a -- a kind of a -- a normal contract
2 but that's basically one of the main drivers to allow them to
3 win the -- the -- the -- the contract with BHE.

4 So having 5 cents as a floor is -- is completely
5 insane. Why? Because this means that if you get 13 cents,
6 you are under contract. If you have 15 cents, you are still
7 under contract. So what miners look is not for a floor. What
8 they look is for a ceiling.

9 No -- and -- and that's what -- what happens so . . .
10 this was the reason that I came in from -- from BHE and BCB.

11 Q. And when you say that you look for a ceiling when you look
12 for an electricity contract, would it be accurate to say that
13 you look for a cap on --

14 A. Yes.

15 Q. -- what you're going to pay for the electricity, not --
16 not the lowest price where it could just go randomly high?

17 A. Completely right.

18 Q. Okay. Now, what was BCB's role at the North Range site?

19 A. Well, they were -- we always asked them and they --
20 they -- they renew this stuff, is that -- they're the local
21 people. So they presented themselves as local. So they're
22 going to be the boots in the ground. They're going to be our
23 eyes and ears. So that's the way they presented themselves.

24 And so -- and their role was for -- remember, the
25 BHE's agreement has two phases. It has Phase 1 and it has

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

138

1 Phase 2. So we just talk about Phase 1.

2 They were in charge -- they were project manager.

3 So, basically, they have the specific roles. And their
4 specific role was, basically, to be sure that everything was
5 moving appropriately. So they control monitoring -- you know,
6 doing some risk analysis, doing -- just trying to understand
7 what's going on.

8 And, basically, they needed to do a correct
9 assessment of the situation. That was their role, basically.

10 Q. And BCB's -- and -- and can you describe BCB's performance
11 under the development, hosting, and services contract?

12 A. Well, we tend to divide up -- we can say we have a
13 November break, too. You know? Before November what we --
14 what was happening is that we have a BCB role supporting,
15 giving us information, dumping almost everything.

16 So every time that we asked for something -- "Why are
17 we delayed? So we're supposed -- we're in the middle of
18 August. Why don't we have our -- our -- at least we have some
19 of the procurement in place? What is happening with -- with
20 all the vendors? Where are not they working correctly?"

21 And so this was being reported in a mine -- in a very
22 dumb way. They were saying "No problem; everything's under
23 control. We're a little delayed. Yeah, it's going to take
24 two more weeks. We have talked already with CEGEN" -- and
25 Michael correctly described CEGEN as -- as a really terrible

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

139

1 corporation.

2 So, basically, they were presenting all these
3 problems but giving us a report that all the -- that the
4 deadlines -- even not -- even though -- even though they are
5 not going to be satisfied at any point in time, but they were
6 saying, you know, they're going to be done in two weeks or
7 they're going to be done in one month. So they basically
8 downplayed everything.

9 Then we arrived to -- to November, and then in
10 November they said two weeks after that deadline, so we -- we
11 really were -- were worried about whether things were
12 happening, what things were happening.

13 So we send an -- a consultant, basically, to analyze
14 the situation. This consultant was in -- in Wyoming for
15 almost two -- two days. He came back to us and he told us,
16 "Well, you know, what they have told you about the completion
17 by the end of November is impossible. Even though -- even the
18 completion of facilities by the end of December or even
19 January is impossible."

20 So at this stage what MineOne -- we were in panic
21 mode because -- this was a catastrophe for us in terms of
22 retaining -- retaining our commitment -- our committed
23 investors. So they basically walked away. But it was a
24 catastrophe because we didn't have a single MDC done by the
25 time.

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

140

1 So nothing happens up to December, and then we -- we
2 said "Okay. We need to do something here." And we then hired
3 these consultants, and we send them almost full-time to
4 Wyoming to help BCB, to help our project manager.

5 And they worked together. You know, of course, they
6 have some discrepancies in personalities, et cetera, so they
7 tried to help. But one of the roles that our consultant has
8 was not only to help BCB but to find a solution for a problem
9 that we were facing. At that time remember, Paula, we didn't
10 have a single MDC. We didn't have even an expectation of
11 having an MDC.

12 So this consultant worked in parallel, worked helping
13 the -- the team of BCB but also looking for -- for a solution
14 and they did it. You know, by mid-January 2023 they basically
15 found a -- a corporation that -- as Michael said, is more
16 expensive, yes. But, you know, at least they have all the
17 resources, all the people, all the capacity to move the
18 project forward.

19 So this is when we brought in Systems MEC. And we
20 never -- we never really gave BCB -- so we include BCBC --
21 BCBC in -- in negotiations with Systems. So they were present
22 there.

23 And when we agree on -- when we arrived to an
24 agreement with Systems, it was BCB, the -- the gatekeeper.
25 So -- they always were the gatekeeper, so we never

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

141

1 communicated directly -- MineOne never had a communication,
2 direct communication, with the providers or the vendors. We
3 always have an intermediary, was BCB as our project manager.

4 So -- and then the time happens and then we arrive
5 to -- to March that things were moving faster, so we were
6 happy with that.

7 And then on March we simply -- probably we proposed
8 we need a different proposal to -- to -- to BCBC. We're at
9 March. And then back in March, basically, BCBC walked away.

10 Q. So you mentioned just now in your answer that you made a
11 proposal to BCB in March. I assume that's March of 2023.

12 A. Correct.

13 Q. Okay. And can you describe for the Court what the
14 proposal was --

15 A. Yes.

16 Q. -- and why you -- why the MineOne parties made the
17 proposal?

18 A. Yes. So we were --

19 MR. MURPHY: Objection -- just a minute.

20 Objection, Your Honor.

21 There is a written proposal. That is the best
22 evidence, and I would ask that you provide that to all of us
23 so we can see what the written proposal was.

24 MS. COLBATH: Okay. He was part of the negotiations,
25 and, in the interest of time, I -- I just want him to describe

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

142

1 what took place.

2 MR. MURPHY: I -- I object. The best --

3 MS. COLBATH: When you --

4 MR. MURPHY: -- evidence is the written --

5 MS. COLBATH: When you do the cross-examination of
6 him, you can use that document. I'm -- I'm asking the
7 witness.

8 BY MS. COLBATH:

9 Q. At some point in time -- you just testified March of
10 2023 -- the MineOne parties made a proposal, and I'd like you
11 to describe the proposal and why you made it.

12 MR. MURPHY: Your Honor, I need a ruling on this
13 because I've got less than three minutes left of my time.
14 I don't have time to exam- -- cross-examine the doctor.

15 And we -- she should just get the exhibit.

16 MS. COLBATH: I don't think I designated it. If
17 I can't use things that I did designate, you can't force me to
18 go get a document that I didn't designate.

19 THE COURT: The Court has seen the document.

20 MS. COLBATH: If the witness could --

21 THE COURT: I'm going to overrule the objection.

22 MS. COLBATH: Thank you.

23 BY MS. COLBATH:

24 Q. So, Dr. Rengifo, please describe for the Court what the
25 circumstances were that led to the proposal.

1 A. Yes.

2 At that time, remember, we had a lot of pieces
3 happening. We didn't have an MDC ready. Everything was not
4 in -- not in our place. And we had a client -- and this is
5 Bitmain. Bitmain is our client. That is basically the one
6 that provides the miners, and we are going to be providing the
7 service of -- of hosting.

8 And according to our agreement with Bitmain, March 10
9 was the -- the deadline for us to start, basically, helping
10 them produce their -- their mining.

11 March 10, was nothing there. And we were expecting
12 to have the MDCs done soon. As soon as we saw that this was
13 not possible, then we started thinking seriously "What is
14 going to happen if we start operations with a team that is not
15 really ready for taking over the organization?"

16 What is going to happen is, basically, we're going to
17 have -- it's going to be a catastrophe. Once we start
18 operations, we're going to be seeing -- collapsing. And once
19 we collapse, our -- our main client, Bitmain, is going to
20 simply quit. And if they quit, we are going to be losing
21 everything.

22 So a terrible deal for not -- not having a
23 professional team managing the operations, at least at the
24 beginning. That's what we tried to explain to -- to BCBC, "We
25 need to be very careful because if we fail in this crucial

1 part of the -- of the operations and reputation of the -- of
2 the first MDCs, et cetera, all the project is going to
3 collapse." So we are going to bankrupt. Everyone is going to
4 lose. And so that's -- that was the proposal.

5 So we had at the time -- the -- the group of experts
6 that we had managed -- that -- the people that have managed
7 already crypto mining facilities, more than -- more than a
8 hundred-mill facilities, so they had this experience.

9 We conveyed to them "What we have in your -- in your
10 agreement is not only the operations side of everything. You
11 are going to be in charge of energy" -- and that is extremely
12 important, as mentioned to you, Paula. It is very important.
13 It is one of the main components of the cost, so energy is
14 crucial for us.

15 So we never minimized their work. But we're telling
16 to them -- and Michael was always saying "This contract needs
17 an active management" so -- and that's what we provided.

18 "So please focus on the electricity; let this team
19 focus on the operations. So they're going to be working
20 operations; you do the electricity, the PR, et cetera."

21 And on top of that, what was coming the -- just to --
22 to mention something about the -- we wanted to sue Shermco and
23 CEGEN -- yeah. This was a proposal that they made to us.
24 I think this was all in the same recording that Michael is
25 saying.

1 They proposed to us -- Emory told us "Why don't we
2 sue CEGEN and Shermco? We can do that because we have all the
3 documents. We can give this all to you."

4 So it was not our idea. And I remember it clearly,
5 myself saying, "Well, Emory, we are not in the business of
6 suing people. We are in the business of creating business."
7 And "If you want to do this, want to proceed, okay; you are
8 more than welcome." And, basically, there wasn't any reason.

9 So we needed the operations to be a successful
10 operation. If it -- if it was not going to be a successful
11 operation at the time, simply we -- we collapse.

12 Q. Did there come a point in time where you discussed the
13 proposal with BCB?

14 A. Well, the thing is that when we proposed this one here, we
15 sent out a proposal to them, and we agree with them in the --
16 in the following terms.

17 So we are going to go in person because this is very
18 important. We need to agree. We need to discuss face-to-face
19 and arrive to a conclusion and then -- we're going to arrive to
20 a -- to -- you know -- to a conclusion that's going to be
21 mutually beneficial for us.

22 And so that's why on March 15, 2023, Jiaming Li,
23 Haku Du, and myself flew to Denver. And then from Denver we
24 drove to -- to Wyoming, to the -- our facility. And it was
25 simply -- where the expectation was to find Michael, Emory,

1 and Neil and start discussing because it was a proposal.

2 So when we arrived to -- to the facilities and
3 then -- we had this office; it's -- it's a trailer office.

4 And then we get in and we -- we did -- we didn't see the --
5 the guys from BCBC.

6 And then we asked them "So where are these guys?
7 Where is -- where is Emory and Michael?"

8 And one of them told us, "Well, they quit already, a
9 couple of days ago."

10 So for us it was a shocking situation. So in the --
11 I remember Jiaming Li calling, I think, Michael; no reply.
12 And then we were basically in shock with -- "They quit? Where
13 they have gone?" you know.

14 Because we had a -- a meeting at the time with
15 Tony -- Tony Simpson that is the CEO of -- of Systems MEC.
16 And then we -- we wait for a minute, a couple of minutes, and
17 nothing happened so we moved together to see Tony and then we
18 start discussing things that we were --

19 MR. MURPHY: Objection, Your Honor. This is
20 nonresponsive now. It's just a speech.

21 MS. COLBATH: That's not true. I gave him -- I gave
22 him a -- a lob ball question so that he could explain what
23 took place.

24 MR. MURPHY: The answer -- the question was --

25 MS. COLBATH: I stayed away from leading questions.

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

147

1 MR. MURPHY: -- did you -- did you talk to him about
2 it or not. Yes or no.

3 THE COURT: Well, I'll sustain the objection.

4 Ask your next question.

5 BY MS. COLBATH:

6 Q. After -- after you arrived at -- in Cheyenne, Wyoming, and
7 the BCB principals, you learned, had quit, what happened next?

8 A. We met Tony Simpson, the one -- the one that was in charge
9 of our -- our facilities at -- the building of our facilities.

10 He was the CEO of Systems MEC.

11 And, basically, we worked with him and -- what -- but
12 we are not the experts, so we were out a PM. So, basically,
13 we sit with him, and he explained some of the things that he
14 was doing.

15 Q. After -- after BCB quit, did you hire a new property
16 manager?

17 A. A project manager.

18 Q. Project manager. Excuse me.

19 A. No. No. So we were -- we were left in -- in the limbo.

20 Michael said that he has sent emails and communicated
21 to every -- every one of the -- of the vendors. Yeah -- no,
22 they did it. So they communicated. Because he was clear,
23 saying "I'm not part anymore of the MineOne project, so you
24 deal directly with Erick, Jiaming Li, Haku Du" -- so he did
25 that. He provided us with some invoices, et cetera. He did

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

148

1 that.

2 But the thing is that when you get to a facility, the
3 facility's not running just by papers. So for us it was a
4 surprise. Okay. What is next? We are not project managers.
5 We're not professional project managers.

6 So we started relying completely on -- on Tony and
7 the people that was with us because we were really in a -- in
8 a panic mode, so everything was in a catastrophe at that time.

9 We have a client, Bitmain, that was complaining to
10 us. Well, they were complaining before that.

11 We were in the limit of the budget, so we were -- we
12 really need money, so we were looking for funding in an
13 emergency. We're not in a -- we're not talking about this
14 fantastic world that Michael is describing and we should
15 all -- you have the conditions that you can say what is
16 camouflage, what is not camouflage.

17 We need to be clear and sound here. We were at the
18 brink of a collapse. MineOne was ready to basically file for
19 bankruptcy. We didn't have funding. We didn't have -- given
20 the -- the situation with zero MDCs --

21 MR. MURPHY: Objection, Your Honor. It's all
22 nonresponsive. It's just a self-serving speech.

23 THE COURT: Sustained.

24 MR. MURPHY: It is not responsive to the question.

25 THE COURT: Sustained.

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

149

1 MS. COLBATH: I asked what happened next, and he's
2 describing what happened next.

3 And I would appreciate it if -- if, Mr. Murphy, you
4 wouldn't interrupt the witness in the middle of his answer.

5 I'll just follow up on when he's describing what
6 happened next.

7 BY MS. COLBATH:

8 Q. You just talked about issues looking for funding,
9 potential bankruptcy, and a collapse.

10 And I would ask you to expand on that and tell the
11 Court what the situation was and what the MineOne parties had
12 to do in response.

13 A. Perfect.

14 So what happens is -- remember, we were having a
15 client that was in -- in partial panic mode. We were supposed
16 to serve them -- starting serving them on -- serving them on
17 March 10.

18 We have a -- we didn't have a project manager that
19 was in place, so we needed to take over all the
20 responsibilities of a project manager, so this implies,
21 basically, understand what the things were done, what was
22 wrong, what needs to be redone, and start talking with a --
23 a -- a -- Systems MEC.

24 And, at the same time, we needed to start looking for
25 funding. We had -- our reputation was lost far beyond -- it

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

150

1 was far before -- you know, October, more or less, when --
2 when -- we didn't deliver anything.

3 So we were not able to secure our investors because,
4 basically, we didn't produce a single MDC by October, not a
5 single MDC, like you say, by November, December. Nothing. So
6 we were in a situation that was a very strong and a stressful
7 situation. We were looking for money.

8 Now, when you have this type of situation, the
9 financial markets don't work. So you can go to a bank, but
10 the bank is going to close the doors. You can go to a hedge
11 fund, mutual fund, whatever you want. No one is going to give
12 you a single penny. No one is going to give you money.

13 THE COURT: I think -- I think we're just getting in
14 an argument again.

15 THE WITNESS: Yes.

16 THE COURT: What happened?

17 What happened?

18 THE WITNESS: So, basically -- yes.

19 What happened is that they left us as -- and we need
20 to assume the position of project manager. We are not
21 professional project managers. We need to do that because we
22 were forced by them -- by themselves leaving this -- this
23 facilities.

24 And, also, at same time we were forced now to have an
25 additional challenge, Your Honor. It is -- we were -- we

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

151

1 needed -- we were in a -- they were -- they sue us. And when
2 they sue us, what happens is a -- basically, we are not any
3 more eligible in the financial markets to get money.

4 So -- and that was our stressing situation. We
5 needed money to finish the project. But we were not able to
6 get money from capital markets, not banks, not hedge funds.

7 So we needed to look for money if we wanted to
8 survive. So where do we -- where did we get the money from?
9 Well, parties that we already knew, we need to beg them to
10 help us with money so they lend us money.

11 And, remember, it's \$200,000 for a couple of weeks,
12 and then we need to lend more money to pay the \$200,000 to get
13 for additional funding.

14 MineOne is -- sorry. Systems, as Michael correctly
15 said, these are very -- very good professionals, but they are
16 very expensive. They have 40 or 45 people in the place that
17 we need -- they need to pay. So, basically, every single week
18 we have bills coming to us and bills coming to us and we have
19 no money.

20 So we talked with Systems. We -- and they help us to
21 continue moving this stuff. But they weren't there to help us
22 with what was going to be a turnout, so they asked us --
23 "Okay. You know what? I think you need to pay me
24 \$1 million."

25 So we need to provide to all these parties, all

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

152

1 these -- all these parties that Michael said camouflage -- we
2 don't understand why. But we get the money to pay to Systems.

3 And at the end of the day, we -- Your Honor, by
4 August 2023 -- just by August 2023 -- so from March that they
5 left to August 2023 -- we finally got the 10 MDCs up and
6 running.

7 BY MS. COLBATH:

8 Q. Let me ask you, the -- the transaction with CleanSpark
9 includes a -- an assignment of the Black Hills contract;
10 correct?

11 A. Correct.

12 Q. Could you -- could you describe for the Court the
13 contract, when it came into being, that will be assigned as
14 part of that transaction?

15 A. Yes.

16 So it is -- it is not at all the original contract
17 that BHE signed with -- with BCB. The -- remember that I told
18 you at the very beginning that BCB agreement with BHE was the
19 floor 5 cents?

20 So this was a really catastrophic contract even
21 though, you know, we helped -- we -- we worked together with
22 BCB to get an -- an amendment contract, et cetera.

23 But even though the price that we got, Your Honor,
24 from -- from March to -- March -- March '23 to March '24 --
25 so -- yes, to March '24 -- it was 5.7 cents. We couldn't

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

153

1 operate on July because the price was more or less 8.2 cents,
2 and we couldn't operate on August; the price was very similar.
3 But remember our -- our limit, our ceiling, our revenue is
4 8 cents.

5 So everything else, everything -- if the price goes
6 above 8 cents, we're simply done. We cannot operate. We need
7 to close our operations. Okay? And that's what happened in
8 July and August. And that was a problem with the contract.

9 So given this problem with the contract that has no
10 limit, no -- no upper limit --

11 THE COURT: You're talking about July and August of
12 2022?

13 THE WITNESS: Yes. July and August of 2022 -- this
14 is -- that -- no, July and August 2023. Because we already
15 started operations on July and August 2023.

16 THE COURT: Well, didn't -- didn't BCB go back to
17 Black Hills and negotiate a better price for you --

18 THE WITNESS: No. So this was (indiscernible) --

19 THE COURT: -- in 2022?

20 THE WITNESS: That was 2022.

21 So when -- November of 2022 when we entered into
22 the -- the discussion with them, we have this floor of
23 5 cents.

24 The modification of the agreement, they didn't
25 modify -- they didn't modify the 5 cents floor. What they did

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

154

1 is basically -- what we tried to help them to do -- is
2 basically tried to align the incentives of BHE with our
3 incentives of getting better price.

4 So what we told them is the following: "If you
5 provide us electricity below 5 cents, we are going to share
6 the difference." So, for example, if they provide us
7 electricity for 3 cents, the difference between 5 cents and
8 3 cents, 2 cents, we're going to be -- was going to be divided
9 equally between BCB -- sorry -- between BHE and MineOne.

10 So this was an amendment. But the amendment never
11 changed the floor price. The floor price was existing up to
12 April 2024.

13 So what happens is that even though this price --
14 with the 5.7, it was a reasonable one; it implied our floor.
15 But we decided -- we said, you know, "This is impossible. If
16 we want to survive, if we want to really move the project, we
17 need to find cheaper prices."

18 So that's why in September 2023 we started discussing
19 with BHE -- so we're talking September 2023 so B- -- sorry.
20 BCB already quit on March 2023.

21 We start discussing with -- with BHE, the electricity
22 provider, and finding new sources of energy and we did it. So
23 more or less by November, December 2023, we find something
24 that -- we found something that's called in-balance market
25 and, basically, negotiated with different negotiations by the

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

155

1 end of March, and by the first day of April we sign our
2 agreement.

3 So what is the beauty of all this agreement and why
4 the -- why this agreement is the one that has the value, is
5 that the maximum average price, including all the fees and --
6 and benefits for BHE, is below 4.5 cents.

7 So that's why CleanSpark now, for example, is looking
8 at this contract-- at this contract, not the previous
9 contract, this contract -- as the contract. I -- I can tell
10 you and many of the -- of the colleagues in Wyoming mentioned
11 that, including BHE, this is the price -- this is the best
12 price ever for any corporation.

13 For anyone. Even Microsoft someone mentioned don't
14 have this. They don't -- they do not have this price.

15 So we negotiated this price for almost five --
16 five months. We found it. We worked together with BHE. We
17 need a lower price, means a lot of changes.

18 And that's the agreement, Paula, basically, she is --
19 CleanSpark is -- is inheriting.

20 BY MS. COLBATH:

21 Q. And what was BCB's role in negotiating this April 2024
22 contract that's going to be assigned as part of the CleanSpark
23 deal?

24 A. Nothing. They quit on April 2023 -- sorry -- March --
25 mid-March 2023.

1 And then we started the discussion to get this price
2 by September 2023. So it was over six months after they quit.

3 Q. And could you -- could you briefly just describe, if and
4 when the CleanSpark transaction closes, how the proceeds of
5 the transaction will be used by the MineOne parties?

6 A. Well, what we need to do is something that is -- is
7 meaningful, is we need to pay back the people that have helped
8 us support and -- and arrive to this point in which we have
9 built everything.

10 So I -- I completely disagree with -- with Michael in
11 the sense of there is no transaction records. No, we have --
12 every single money has been banked. Every single money has
13 been banked by the -- by the party that originated the money
14 because -- come to MineOne and we have paid to any of the
15 other vendors. And sometimes when we needed an origin
16 payment, our -- the one that was originating the loan, they
17 directly -- by order of us -- they directly paid to the
18 vendor.

19 So what we need to understand is this was an
20 emergency situation. So we didn't have time to sit and
21 prepare contracts and agreements and discuss with lawyers and
22 coming back and forth with lawyers. No.

23 This was "I need 200,000 to pay -- to pay Systems" --
24 or one of the contractors of Systems. Well, there was --
25 these guys are about to -- they're going to move because they

23-CV-00079-ABJ

RENGIFO - DIRECT - COLBATH

157

1 don't have money that -- we're not paying them.

2 So this was an emergency crisis situation. That's
3 what we tried to do. We tried to convince every -- every
4 individual -- every corporation that we had in our -- in our
5 books and tell them "Please help us here because, if you don't
6 help us at this stage, we're going to collapse."

7 And then something that was good is that we -- on
8 December 2023, Your Honor, we start talking -- discussing
9 with a -- with a lender that is called Antalpha that Michael
10 mentioned in the -- in his conversation.

11 And Antalpha, we started on December 2023.
12 January 2024, we signed an LOI, and these guys approved the
13 agreement just on August 2023. So you can imagine at the
14 time -- it is basically eight months of negotiations to get
15 that \$8 million that they offered to us.

16 So in -- in a crisis situation, that was impossible
17 to do. We cannot have these type of conversations with anyone
18 in the market because two things happen.

19 We were in a -- we were in a terrible situation. We
20 didn't have -- we had zero money, zero MDCs. We were -- we
21 had dealt with our project manager that simply abandon us and
22 not only simply abandoned us but also sue us.

23 MR. MURPHY: That's -- objection -- objection,
24 Your Honor. I'm sorry, but this is nonresponsive now.

25 MS. COLBATH: And he is fine because I -- my time --

23-CV-00079-ABJ

RENGIFO - CROSS - MURPHY

158

1 I have another witness so I -- I'm done with Dr. Rengifo.

2 There's a lot more to cover but -- but -- but with --
3 you know, I'd like to save some for Mr. Aldrich.

4 So I don't know if you have any time left for
5 Dr. Rengifo, Pat.

6 MR. MURPHY: I just have one thing.

7 **CROSS-EXAMINATION**

8 **BY MR. MURPHY:**

9 Q. Dr. Rengifo, isn't it true that you weren't even at the
10 project in November of '22, December of '22, January of '23,
11 and February of '23?

12 A. From January to more or less the end of February, I was
13 not in the calls, but I was working hard, as usual, to get
14 funding, and I was in -- working to -- with Jiaming Li and
15 Haku Du that were always present in the conversations.

16 MR. MURPHY: Nothing else, Your Honor.

17 Thank you.

18 THE WITNESS: Thank you, Patrick.

19 MS. COLBATH: The MineOne defendants would like to
20 call as their next witness Mark Aldrich.

21 THE COURT: Mr. Aldrich, raise your right hand and be
22 sworn.

23 (Witness sworn.)

24 THE WITNESS: I do.

25 / / /

1 **MARK ALDRICH, DEFENDANTS' WITNESS, DIRECT EXAMINATION**
2 **BY MS. COLBATH:**

3 Q. Mr. Aldrich -- and thank you for -- for attending.

4 Could you give the Court a brief summary of your work
5 experience?

6 A. Yes.

7 I'm a chemical engineer and I've spent over 40 years
8 designing, actual construction of, construction management of
9 industrial facilities, including power plants, power
10 generation facilities, crypto mining facilities, about
11 1500 megawatts total, either design or construction or both.

12 Q. Did you have any involvement at any point in time with the
13 crypto mining facilities in Cheyenne, Wyoming?

14 A. Yes. Yes, we did. I was the project executive in charge,
15 so the engineering team, the construction management team, and
16 the direct hire construction team all worked directly for me.

17 I also operated as a subject matter expert in each of
18 those fields.

19 Q. And how did you end up getting involved in the Cheyenne,
20 Wyoming, MineOne facilities?

21 A. So we were brought in as -- by BCB -- as they were
22 working, I believe, to -- to finally land the job. And we
23 ended up having three scopes that BCB gave us.

24 We had the design engineering for the -- the site,
25 which included mechanical, civil -- we were partnered with

23-CV-00079-ABJ

ALDRICH - DIRECT - COLBATH

160

1 someone locally. We also did electrical. And we had all of
2 the systems up to the boundary of the modular data centers
3 that were under contract to BCB. So that was one scope.

4 The second scope, we were awarded the construction
5 management of the entire site, which included preparation and
6 monitoring of schedule in progress, site safety. You know,
7 procurement activities like receiving of materials and
8 verifying quantities and overall control of the site.

9 And then, third, we were awarded direct hire
10 construction activities for electrical and instrumentation of
11 the facilities up to the boundary with the data centers.

12 Q. Could you describe for the Court your interactions and
13 observations of BCB in connection with the project.

14 A. So it became apparent, as we were brought in, that they --
15 they truly needed the expertise. They, as near as we could
16 tell, were over their head as far as engineering of these
17 types of facilities and construction of these types of
18 facilities. And I think we provided a lot of direction,
19 expertise.

20 We also pointed them in the direction for their
21 subcontractor CEGEN, who had things that did not meet the
22 National Electric Code in their design. Even though it was
23 outside of our direct area of responsibility and we were not
24 stamping those electrical drawings, we felt obligated to point
25 out code violations that would interfere with the facility

23-CV-00079-ABJ

ALDRICH - DIRECT - COLBATH

161

1 being operational.

2 Q. Did there come a point in time when you were transitioned
3 off the project?

4 A. There did. There was. And it was, I would say, late
5 February, maybe early March.

6 You know, we knew that the project was having
7 challenges, which we had been pointing out for many months.
8 We prepared a critical path method schedule of the
9 construction and engineering and procurement activities, and
10 we reported routinely to BCB. I personally was on multiple
11 calls weekly with them.

12 And I believe -- well, throughout the project, our
13 interaction was direct with BCB. We did not talk to MineOne.
14 All reports were given to BCB, all pay apps went to BCB, and
15 they passed on the information that they chose to MineOne.

16 We notified them multiple times of schedule problems,
17 of shortfalls, and of corrective actions that we could see.
18 And we did not see the vast majority of our recommendations
19 being acted upon.

20 In fact, we were blocked from pushing and making
21 corrective action with CEGEN, who was their subcontractor,
22 even being told "We don't care if there's OSHA violations.
23 You cannot direct our subcontractor on-site."

24 Q. Just so the record is clear, which party said to you that
25 they didn't care about OSHA violations?

23-CV-00079-ABJ

ALDRICH - DIRECT - COLBATH

162

1 A. That was -- that was Emory.

2 Q. Someone affiliated with BCB?

3 A. Yes. And I wouldn't characterize it as they didn't care.

4 But even though we were responsible for site safety as
5 construction managers, as we were pointing out and identifying
6 OSHA violations, which I would shut down a site for, we were
7 told that CEGEN was --

8 MR. MURPHY: Objection. Time-out. Time-out.

9 "We were told that" is hearsay.

10 THE COURT: Sustained.

11 THE WITNESS: Okay.

12 A. (Continuing.) I was told --

13 MR. MURPHY: Same thing.

14 THE WITNESS: I have firsthand knowledge.

15 MR. MURPHY: Same objection. It's hearsay.

16 THE WITNESS: Okay.

17 MS. COLBATH: Well, again -- this is not being
18 introduced for whether there was actually an OSHA violation.
19 It's what was discussed at the time and -- and who was having
20 conversations. MineOne was not part of that.

21 But -- but I -- I'll move on.

22 THE COURT: Well, you can even say -- lay a
23 foundation. I don't even know who's talking. I mean, it's
24 just somebody out there talking.

25 ///

23-CV-00079-ABJ

ALDRICH -CROSS - MURPHY

163

1 BY MS. COLBATH:

2 Q. Did there come a point in time when you did interact with
3 representatives of the MineOne parties?

4 A. We interacted with MineOne after we were removed from site
5 and we still had unpaid bills. And, at that point, I got to
6 meet Dr. Rengifo and we worked out payment for the unpaid
7 monies for work that had been completed and was due.

8 But until that point we had been held at arm's length
9 and not been allowed to communicate with MineOne.

10 Q. And did MineOne ultimately make all of the payments to
11 Shermco that it agreed to make?

12 A. They did.

13 To my knowledge.

14 MR. MURPHY: Can I ask the Court how much time Paula
15 has left, please? I thought -- I think we're done.

16 THE COURT: I think it's pretty close.

17 She has about 10 minutes.

18 MR. MURPHY: Oh, what?

19 MS. COLBATH: So I'm -- I'm saving it for the MineOne
20 defendants' accountant. I have no further questions.

21 THE WITNESS: Okay.

22 MR. MURPHY: Very quickly.

23 **CROSS-EXAMINATION**

24 **BY MR. MURPHY:**

25 Q. Sir, we talked yesterday -- didn't we? -- on the phone?

23-CV-00079-ABJ

ALDRICH -CROSS - MURPHY

164

1 A. We did.

2 Q. You told me that Shermco sued MineOne for nearly \$500,000
3 and then settled the case later; right?

4 A. No. That's not what I said.

5 I said --

6 Q. You said --

7 A. -- Shermco made claim to MineOne for monies that were due
8 and owing and unpaid. We did not file a suit against MineOne.

9 Q. I'd be surprised to learn that.

10 You said CEGEN was MineOne's subcontractor. But
11 don't you mean that CEGEN was MineOne's -- was MineOne's
12 subcontractor, not BCB's subcontractor?

13 A. I was told that -- by BCB -- that CEGEN was BCB's
14 subcontractor.

15 Q. Have you ever seen the contract between Shermco and
16 MineOne?

17 A. Yes.

18 Q. Have you seen this contract between CEGEN and MineOne?

19 A. No.

20 Q. You've never seen a contract between BCB and Shermco;
21 correct?

22 A. That is correct.

23 We originally negotiated one, and at the last minute
24 they asked us to transfer the parties from BCB to MineOne,
25 which we did.

23-CV-00079-ABJ

ALDRICH -CROSS - MURPHY

165

1 MR. MURPHY: Nothing more, Your Honor.

2 THE COURT: Who is "they"?

3 THE WITNESS: "They"? I'm sorry.

4 THE COURT: You said --

5 MS. COLBATH: You said "they asked us."

6 THE COURT: -- "they asked us."

7 THE WITNESS: Oh, I'm sorry. My mistake.

8 BCB negotiated a contract with us for service, and,
9 at the last minute before we were to sign the contract, BCB
10 requested that we agree to change the contract to be between
11 Shermco and MineOne, which we agreed to.

12 THE COURT: Thank you.

13 BY MR. MURPHY:

14 Q. And MineOne wanted that, didn't they, Mr. Aldrich?

15 A. It is my understanding that MineOne requested BCB to
16 transfer the contract from BCB to MineOne.

17 MR. MURPHY: Thank you. Nothing further for you.

18 MS. COLBATH: Okay. Nothing.

19 Our final witness -- thank you so much.

20 THE WITNESS: Thank you.

21 MS. COLBATH: Our last witness is Ed Deignan. Okay.

22 MR. MURRAY: Your Honor, this is Scott Murray on
23 behalf of Plaintiff BCB at this point.

24 We would renew that objection to preclude Mr. Deignan
25 from testifying in today's hearing.

1 THE COURT: Overruled.

2 Please raise your right hand and be sworn.

3 (Witness sworn.)

4 THE WITNESS: (No response.)

5 MS. COLBATH: Ed, are you on mute?

6 There. I can hear you now. Okay.

7 THE WITNESS: Yes. The answer was yes to that
8 question.

9 MS. COLBATH: Okay.

10 THE COURT: I think -- before you start,
11 Ms. Colbath --

12 MS. COLBATH: Yes.

13 THE COURT: -- repeat the objection, Counsel.

14 MR. MURPHY: Your Honor, this is Pat Murphy.

15 Our objection has been -- and in writing yesterday --
16 that Mr. Deignan was not listed as a witness until June the
17 22nd, on Saturday night.

18 Your Honor's deadline is June 19th. This was all
19 information -- all of these loans that he's apparently now
20 going to testify about was well known and well anticipated by
21 MineOne even back in May of this year. They simply didn't
22 list him. He's not a true rebuttal witness. He is a witness
23 that they should have called in their case in chief on
24 June 19th to give testimony about the loans.

25 He's -- that's -- that's why he should be precluded.

1 They just missed the deadline. And they chose not to.

2 MS. COLBATH: So -- so if I could be heard,
3 Your Honor.

4 This is a classic no good deed goes unpunished.

5 Mr. Murphy's son submitted, I think, a -- a 78-page affidavit
6 on Monday night and has continued to raise -- he purported to
7 be an expert on the loans, and so this is in rebuttal to what
8 we just heard from Mr. Murphy.

9 He testified working for FASB, and he went into great
10 detail about camouflaged equity, testifying as an expert.

11 This is absolutely in response to that testimony.

12 Rebuttal, again -- when I submitted my witness list,
13 I said I was not disclosing, but as a courtesy to Mr. Murphy
14 and to give him as much heads-up as possible, I did add
15 Mr. Deignan.

16 And there's no prejudice to Mr. Murphy, and the
17 testimony will be under 10 minutes so that the Court can have
18 some background in response to what Mr. Murphy testified to
19 today.

20 MR. MURPHY: None of it's been disclosed. It's not
21 10 minutes. It would only be about three. But the Court has
22 heard the arguments.

23 The other thing is I've been asking for this loan
24 information since October '23 and now they list him at the --
25 at the 11th hour with no designation. It's unfair.

1 MS. COLBATH: I requested information --

2 MR. MURPHY: It's not fair.

3 MS. COLBATH: -- and Judge Rankin actually ruled
4 and -- and said we did not have to provide loan information.
5 That was -- that was a written order and decision.

6 MR. MURPHY: Not true.

7 THE COURT: All right.

8 Mr. Murphy, I'll sustain your objection. When a
9 party -- and I'm just quoting from a -- an earlier case from
10 this District, *Linnik versus Trans Quality, Incorporated*. And
11 you want to might check it at 2022 Westlaw 2189547 at Note 2.
12 Wyoming District Court, January 12th, 2022.

13 When a party "seeks to rebut theories which they knew
14 about or reasonably could have anticipated, the District Court
15 is within its discretion in disallowing rebuttal testimony,"
16 citing *Comcoa, Inc., versus NEC Tel, Incorporated*,
17 931 F.2d 655, 664, Tenth Circuit, 1991.

18 "Because plaintiffs were warned that rebuttal
19 evidence would be restricted and because they reasonably could
20 have anticipated defendants' evidence, it was within the
21 District Court's discretion to disallow plaintiff's rebuttal
22 evidence," *Fashauer versus New Jersey Transit Rail Operations*,
23 57 F.3d 1269 at 1287. That case held that the District Court
24 acted within its discretionary -- discretion by precluding
25 rebuttal testimony to that which reasonably could have been

1 anticipated.

2 MS. COLBATH: Your Honor, might we get a ruling on my
3 motion to strike the two affidavits that were filed at
4 midnight on Monday night as part of a reply?

5 Mr. Murphy was granted additional pages in his reply
6 brief but then took the liberty to submit two entirely new
7 affidavits, one of Emory Patterson, Docket 242-4, a 78-page
8 affidavit on reply -- it had 112 paragraphs -- and another
9 Michael Murphy affidavit, Docket 242-3, on reply, 38 pages,
10 50 if you include the exhibits. That had 86 pages.

11 They were an absolute abuse to the extension that he
12 received for five additional pages on his reply brief. Both
13 affidavits were chock-full of new material that did not
14 respond to our opposition.

15 So we would like those two affidavits stricken from
16 the record.

17 MR. MURPHY: They -- they are not even part of the
18 hearing today. This is a moot issue.

19 MS. COLBATH: Not moot. You filed --

20 MR. MURPHY: It hasn't been -- they haven't been
21 offered into evidence today, and they're not the evidence
22 today.

23 Why are -- this is -- it's moot.

24 MS. COLBATH: It's not moot. I filed a motion and --
25 and it's -- it's ready for decision.

1 THE COURT: Well, what were they submitted for?

2 MS. COLBATH: To -- to put new facts before the
3 Court, to -- to extend what Mr. Murphy couldn't fit into his
4 brief. The first eight pages of one of them is an entire
5 recitation -- it's where I learned for the first time that
6 Mr. Murphy had received documents from Republic Title. He
7 references material that was totally new.

8 It was totally inappropriate as a reply. He was
9 entitled to a reply brief and has submitted, as I said, over a
10 hundred pages of new testimony on this motion.

11 THE COURT: Well, I'll agree with you. I will not
12 consider it for this hearing.

13 MS. COLBATH: Thank you.

14 MR. MURPHY: Your Honor, I'd like to use my last
15 2 1/2 minutes to call back Michael Murphy as a rebuttal
16 witness.

17 MS. COLBATH: I'm told that you exhausted the time.

18 Could we get a time from the court reporter?

19 THE COURT: 2 minutes and 59 seconds is what it says
20 on the clock.

21 MS. COLBATH: Okay. I keep getting emails that
22 indicate that it ended. But okay.

23 MR. MURPHY: Michael Murphy, are you there?

24 THE WITNESS: I'm here.

25 ///

1 MR. MURPHY: Okay. Back under oath.

2 **MICHAEL MURPHY, PLAINTIFF'S WITNESS**

3 **FURTHER DIRECT EXAMINATION BY MR. MURPHY:**

4 Q. Did you hear Erick Rengifo testify?

5 A. I did.

6 Q. What is your re- -- rebuttal to what Dr. Rengifo
7 testified to?

8 A. I rebut most of what he said. There's not enough time to
9 go through all the details.

10 A lot of those details were provided in Emory
11 Patterson's rebuttal affidavit, which was produced at such a
12 late time because the defendants failed to produce information
13 to BCB until the last time moment on June 19th. The new
14 information that has come available to us is why we're having
15 to -- to provide our new information. If defendants would
16 just hurry up and give us their info, we could get back to
17 them.

18 But specifically to Rengifo, his claim -- this is
19 what I want to make very clear to the Court: No one is
20 disagreeing about how the project was delayed. The project
21 was delayed. It was very delayed. And that caused all our
22 problems.

23 But we have to look at the contract facts. At the
24 end of the day, MineOne signed a contract with Shermco.
25 MineOne signed a contract with CEGEN. MineOne signed a

1 contract with Black Hills. MineOne signed a contract with all
2 of its vendors.

3 The only party that BCB signed a contract with was
4 MineOne, and earlier we had signed a contract with Black Hills
5 that was assigned. But BCB had no subcontractors on the site.
6 We were not responsible for other parties. Only MineOne, as
7 the contracting party with its vendors, had the ability to
8 control or enforce those vendors' performance.

9 BCB could not force CEGEN to build the 10 data
10 centers faster. CEGEN had to do that.

11 MineOne's claims that this was late, they need to
12 take those up with the vendors who were actually responsible
13 and who were contractually responsible.

14 So that's the main point I want to make, is look at
15 the contracts. MineOne wants to distract us and say it's
16 BCB's fault. But if you look at the actual contracts, you
17 will realize that BCB did everything its contract said, and
18 MineOne is getting upset because it doesn't want to have to go
19 deal with all of its other vendors. It just wants to lump
20 them all together with -- with BCB.

21 So that's the main point I want -- I want to make
22 about it.

23 The other thing I -- the other final point here -- or
24 maybe another point if I have the chance -- is Dr. Rengifo is
25 very smart. He is a PhD. Jiaming Li is very smart. He is

1 a PhD.

2 They understand how to structure things to benefit
3 themselves. They have structured things in a way to get the
4 money out with their related parties under the guise of doing
5 related-party loans.

6 That's the other -- other point that I wanted to
7 make.

8 Q. My last question: Rengifo says that you knew they were
9 Chinese back in June and -- of 2022.

10 A. In June of '22? When we were first introduced to them, we
11 were talking with Erick and Jiaming Li, and Erick mentioned
12 that he represented a multinational group of investors.

13 Jiaming Li, he -- he appeared to be Chinese; he
14 looked Chinese. He represented to us, though, that --
15 I think -- that maybe he was from Mongolia. He -- he said he
16 was living in Singapore.

17 And, yes, I'm aware that Bitcoin mining was banned in
18 China and a lot of Bitcoin miners wanted to relocate to the US
19 and maybe one or two -- we were -- I'm sorry.

20 We were aware that they -- they -- MineOne had
21 clients that were Chinese, people -- people that had the
22 Bitcoin mining machines. But there was much -- much
23 obfuscation and a lack of transparency with who their
24 investors really were. BCB was never privy to that
25 information with the actual investors and their -- their

23-CV-00079-ABJ

M. MURPHY - FURTHER DIRECT - MURPHY

174

1 origin.

2 And I should note this regarding the -- the power
3 contract that Erick talked about: There was a floor in the
4 original agreement for 5 cents. At the direction of MineOne,
5 BCB then renegotiated a new contract with Black Hills where
6 there was no floor.

7 And we have to remember that MineOne signed that
8 contract for that power. And why did they sign the contract
9 for the power? They wanted the power. It was one of the
10 critical factors needed to conduct their business. A lot of
11 other companies wanted the power.

12 MineOne had the contract. They read the contract.
13 They understood the contract. Very smart people. They're
14 very smart. They knew exactly what they were signing. They
15 signed that agreement.

16 So their claims now that they were paying more money
17 than they thought they were going to pay -- they should have
18 known what contract they were signing.

19 MR. MURPHY: That's all I have, Your Honor.

20 Thank you.

21 THE COURT: Very well.

22 Are we ready for our closing?

23 MR. MURPHY: Yes, I am.

24 MS. COLBATH: Sure.

25 THE COURT: Do we want to take a brief recess with

1 the court reporter? And the Court.

2 We'll stand in recess for 15 minutes.

3 (A recess was taken from 6:06 p.m. to 6:35 p.m.)

4 THE COURT: Thank you.

5 Mr. Murphy.

6 MR. MURPHY: Thank you, Your Honor.

7 May it please the Court and counsel.

8 Under Wyoming law, quote, "An order of attachment
9 binds the property attached from the time the writ is
10 executed," 1-15-212.

11 "The property attached or its proceeds shall be
12 subject to the judgment to be rendered," 1-15-211. "An
13 attachment creates a lien under these prejudgment attachment
14 statutes," *Platte County State Bank versus Frantz*.

15 "And a garnishment is a process of attachment, and a
16 garnishee is bound from the time of service. Personal
17 property capable of manual delivery shall be attached by
18 taking it into custody." And Wyoming -- and under Wyoming
19 law, a prejudgment writ of attachment makes MineOne's property
20 subject to execution upon BCB obtaining a final judgment.

21 What that means is this: When BCB obtains the
22 judgment, it can satisfy that judgment from MineOne's property
23 subject to attachment by the prejudgment writs; i.e., the
24 requested portion of the 22,500,000 CleanSpark sales proceeds
25 held by this Court or a designated third-party receiver or

1 custodian.

2 The whole purpose of obtaining prejudgment writs of
3 attachment and garnishment is to establish that BCB is
4 entitled to its requested portion of the 22,500,000 sales
5 proceeds after obtaining the judgment.

6 And the Utah Federal Court wisely observed, quote,
7 "A prejudgment writ of attachment is intended to preserve the
8 status quo by placing the property in the custody of the law
9 to be so held until the Court determines whether or not
10 plaintiff in this action is entitled to judgment in the main
11 case," *DiTucci versus Ashby* in our brief, 2019.

12 Furthermore, BCB does not have to show priority over
13 MineOne's alleged related-party creditors, but BCB proved
14 today its claim is superior to all other claims other than the
15 Antalpah claim. Shareholders and related parties who would
16 loan or invest money in an insolvent company -- which MineOne
17 is based on its liabilities exceeding its assets -- have a
18 lower priority than genuine third-party judgment creditors and
19 other unsecured creditors.

20 The Mississippi Supreme Court said in '69, quote,
21 "Officers, directors, and shareholders of an insolvent
22 corporation or one rendered insolvent in conveyance to them
23 cannot prefer themselves in payment of preexisting debts and,
24 thus, deprive creditors of their claims against the
25 corporation."

1 And, today, BCB proved all the statutory elements for
2 prejudgment attachment. BCB proved MineOne is indebted to BCB
3 for nearly 20 million. Terra Crypto is indebted to MineOne
4 for even more. There are no legal setoffs to this
5 indebtedness.

6 MineOne has not paid anything to BCB on this
7 indebtedness. BCB's requested attachment of the CleanSpark
8 sales proceeds are not sought to hinder, delay, or defraud any
9 creditor of the MineOne defendants.

10 The MineOne defendants' payment of the 19,985,667
11 indebtedness is not secured by any mortgage or lien upon the
12 MineOne defendants' real or personal property in Wyoming, and
13 the MineOne defendants are about to assign, remove, or dispose
14 of their property, these CleanSpark sales money, with the
15 intent to defraud their biggest creditor, BCB.

16 And the Wyoming Fraudulent Transfer Act says in this
17 context, quote, "Defrauding one's creditor simply means
18 MineOne is paying its other related parties and unsecured
19 creditors with the actual intent to hinder, delay, or defraud
20 any creditor of MineOne," 34-14-205(a)(i).

21 And, in determining actual intent under
22 paragraph (a)(i) of the statute, "Consideration may be given,
23 among other factors, to whether, one, the transfer or
24 obligation was to an insider; two, the debtor retained
25 possession or control of the property transferred after the

1 transfer; and, four, before the transfer or obligation was
2 incurred, the debtor had been sued or threatened with suit by
3 its creditor"; here, BCB.

4 And BCB proved each of these statutory factors.
5 Specifically, all of these alleged loans are to an insider,
6 related-party arrangements. Second, MineOne retains
7 possession or control of the CleanSpark monies after the
8 closing. And, third, before the CleanSpark closing happens,
9 MineOne was sued by Creditor BCB. In fact, a year ago.

10 And we proved, today, definitively, the CFIUS defense
11 is no defense to BCB's claim. Andrew Astuno testified that
12 MineOne and MineOne only could notify CFIUS and seek CFIUS'
13 approval for its -- for this real estate transaction. MineOne
14 is, again, trying to blame BCB for what only MineOne could do.

15 And BCB also proved these things: That MineOne
16 anticipatorily repudiated its DHS agreement on March 13, '23,
17 with its decision to remove BCB as the host and operator at
18 North Range and completely preclude BCB from being involved at
19 Campstool and MineOne had no cause to breach or repudiate its
20 DHS agreement with BCB. In fact, BCB substantially complied
21 with each and every contractual obligation it had to MineOne.

22 BCB's primary contractual obligation was to, quote --
23 was to perform, quote, "all other reasonable related
24 activities within its control." "Within its control."

25 BCB complied with its obligation to perform

1 reasonable activities within its control. It was Defendant
2 Terra Crypto, not BCB, who had the contractual obligation in
3 the CS agreement to, quote, "assure," unquote, completion by
4 the completion date. Terra Crypto breached its obligation to
5 ensure that all tasks were developed in a timely manner.

6 CEGEN and -- and Shermco were MineOne's contractors,
7 not BCB's subcontractors, as Mark Aldrich originally and
8 mistakenly testified, and their delays and problems caused the
9 project to be late, but those are not hung on BCB.

10 The camouflaged equity. It is so clear these MineOne
11 loans are not real, genuine loans. They are false loans; they
12 are camouflaged equity, nothing more. They are really an
13 insider's and related party's equity contributions. They are
14 false and contrived efforts to move these CleanSpark monies to
15 Jiaming Li, Erick Rengifo, and other insiders, including
16 members and owners of MineOne Wyoming Data Center, and those
17 fake loans are made to defraud BCB and line Rengifo and Li's
18 pockets with this CleanSpark money.

19 Do you think we'll ever see it after they get it?

20 MineOne's alleged related-party loans are nothing
21 more than camouflaged equity. As the Court said in 2010,
22 *In Re: Lexington Oil and Gas*, 423 Bankruptcy Reporter 353,
23 District of Oklahoma, quote, "When a plaintiff establishes the
24 presence of sufficient badges of fraud, he or she is entitled
25 to a presumption of fraudulent intent. The Court concludes

1 that the Dow note and the Cox note should be recharacterized
2 as equity contributions."

3 That's what this Court should do here. The amounts
4 provided by the MineOne members to MineOne should not be
5 viewed as unsecured loans but, rather, as camouflaged equity.
6 Any anticipated payments to the MineOne members which MineOne
7 has said it plans to do partially out of the Campstool
8 proceeds and the remainder out of the North Range proceeds
9 ahead of Future Judgment Creditor BCB will defraud BCB.

10 And without the Court granting BCB's requested
11 prejudgment writs of attachment and garnishment, MineOne and
12 CleanSpark will close on the Campstool transaction, and Erick
13 Rengifo and Jiaming Li, beneficial owners of MineOne and the
14 only two owners of Terra Crypto, will have \$4,152,434 sent to
15 Defendant Terra Crypto, an entity they solely beneficially own
16 and manage. There are reasons to support the attachment.

17 MineOne projects its own fear to scare the Court into
18 not issuing this prejudgment attachment, saying, "BCB's writ
19 for attachment must be denied as the MineOne defendants should
20 be allowed to close on the properties, delivering clear title
21 to CleanSpark at the conclusion of the hearing." Then they
22 say -- get this -- "Finding otherwise will almost certainly
23 kill any deal for the sale of the properties."

24 That is -- that's a scare tactic; it's wholly untrue.
25 These MineOne defendants also admit in their newest pleading

1 the parties are ready to close on Campstool as early as
2 June 27, 2024, tomorrow.

3 Which way is it, MineOne? Is it that you're going to
4 scare off the CleanSpark deal, or are you going to close
5 tomorrow?

6 In reality, Your Honor, this sale is happening, and
7 it's happening fast and certain. When the Court issues a writ
8 of attachment and garnishment on any portion of the
9 22,500,000, the Presidential divestment order can and will be
10 effectuated without problem or delay. Andy Astuno testified
11 to that.

12 MineOne will be able to live -- to deliver clear
13 title to CleanSpark on both Campstool and North Range because,
14 first, BCB consents to 6,903,000 being paid from the
15 11 million 250 Campstool purchase monies to release and clear
16 out Antalpah's secured mortgage on North Range, thus
17 delivering clear title to North Range.

18 Second, no one besides Antalpah has filed a mortgage
19 or security interest on North Range or Campstool. And, third,
20 BCB is not seeking a writ against the Campstool or North Range
21 lands or real property. Instead, BCB seeks a writ only on the
22 remaining 15,529,165 of CleanSpark purchase monies and the
23 999,111 of MineOne's remaining security deposit with
24 Black Hills Energy.

25 You know, CleanSpark and MineOne were hours away,

1 literally, from closing on Campstool on June 5th of 2024.
2 MineOne delivered its warranty deed to CleanSpark on June 5th,
3 2024, for Campstool.

4 And now they may close as soon as tomorrow and move
5 11,250,000, all on the value BCB created, all that was
6 created, built, and earned by BCB's hard work and their
7 securement of the electrical power contract.

8 Attaching these purchase monies does nothing to
9 impair or impede the sale of either property, and attaching
10 the purchase monies does nothing to impair or delay the
11 divestment order under the Presidential order. Instead,
12 attaching these CleanSpark monies promotes and effectuates the
13 Presidential order.

14 With respect to the bond, in their newest pleading
15 MineOne wants you to set a bond in an amount not less than
16 32 1/2 million. My God. Even though there is no possibility
17 MineOne will suffer any damage -- any damage -- if the writs
18 are issued and the monies are held by the Court, not by BCB.

19 The Wyoming attachment statute, like other states'
20 prejudgment attachment statutes, leaves the amount of the bond
21 to Your Honor's discretion.

22 And recently the Minnesota Federal Court identified
23 the factors Courts consider in establishing a prejudgment
24 attachment bond. Quote, "In establishing the amount of the
25 bond, the Court shall consider the value and nature of the

1 property attached, the method of retention or storage of the
2 property, the potential harm to the respondent or any party,
3 and other factors the Court may deem appropriate."

4 First, with the Court or its designee financial
5 institution holding all 15-plus million of the attached
6 CleanSpark purchase monies, there is no damage or loss, quote,
7 "which may be incurred or supported by MineOne as a result of
8 a wrongful issuance of the writ," Wyoming Statute 1-15-104(a).
9 "No damage or loss." That's because all of the money will
10 stay in the Court's control until a final judgment is entered
11 or execution issued.

12 The only way MineOne can lose any of the money is for
13 the Court to later enter judgment against MineOne and BCB then
14 executes on it. If the Court later finds in MineOne's favor,
15 they've lost nothing, and they've made a good 5 percent on all
16 of their money because the money is protected and will be
17 earning interest at or near 5 percent between now and final
18 judgment.

19 BCB, MineOne, and MineOne's other creditors will
20 actually gain from this 5 percent interest on the invested and
21 attached CleanSpark funds. MineOne reserves all of attached
22 proceeds and the 5 percent interest it generates if it
23 prevails at trial.

24 And even if, somehow, MineOne would later argue that
25 the Court erred with its wrongful issuance of the writ,

1 MineOne suffers no damage or loss from any wrongful issuance
2 of the writ. The only potential damage MineOne posits is,
3 quote, "is that the potential damage that would result if the
4 writ causes CleanSpark to walk away from the deal," unquote.
5 That's in their response at page 10.

6 Did Your Honor hear any evidence today that
7 CleanSpark is going to walk away from the deal? No. The
8 evidence is undisputed. They're going to close on this puppy
9 tomorrow, and then they're going to go and close on
10 North Range.

11 There is no evidence presented at this hearing that
12 CleanSpark will walk away from its 22,500,000 purchase if the
13 Court enters writs of attachment and garnishment.

14 This deal is happening. CleanSpark is closing and
15 paying 22 1/2 million to the escrow agent, Republic Title of
16 Texas, as quickly as possible, and MineOne will quickly
17 receive and distribute the entire 22 1/2 million with, quote,
18 "the actual intent to hinder, delay, or defraud a creditor,
19 BCB, of the debtor if the Court does not attach and garnish
20 the money."

21 MineOne has told the Court it will never pay BCB. We
22 believe them. But with MineOne telegraphing its actual intent
23 to hinder, delay, or defraud BCB's likely judgment creditor,
24 the Court should exercise its broad discretion and properly
25 set the bond at 1,000, 2,000, or even \$3,000. BCB cannot

1 afford to post a bond of more than a few thousand dollars.
2 More importantly, an expensive bond is not needed under our
3 case circumstance.

4 Final thoughts: Your Honor sees and hears how
5 contentious this case is. You saw it today. Without these
6 writs this case goes to trial. Without -- I strike that --
7 yeah.

8 With the writs -- with the writs, we can settle this
9 case and we would.

10 If the Court does not grant these writs tonight, all
11 is lost for BCB, years of hard work, creativity, and all the
12 value BCB earned in winning the power contract and developing
13 valuable assets. MineOne will close on Campstool tomorrow,
14 the escrow agent will send 6,903,000 to Antalpha and more than
15 4 1/2 thousand to Jiaming Li and Erick Rengifo, the Terra
16 Crypto owners. This money will be forever lost to BCB.

17 Then, when North Range closes, all 11,250,000 will be
18 paid to MineOne, and MineOne will divvy it up to Jiaming Li,
19 Erick Rengifo, all their insiders and related parties and
20 forever beyond the reach of BCB, even though BCB will likely
21 be MineOne's judgment creditor for over 38 million.

22 Everything turns on Your Honor's decision to issue or
23 not issue these writs.

24 If the Court does not attach or garnish these
25 purchase monies, the MineOne defendants will pay and enrich

23-CV-00079-ABJ

CLOSING ARGUMENT - COLBATH

186

1 themselves and their related parties, and they'll pay their
2 own lawyers to keep fighting BCB. But, by issuing the writs,
3 Your Honor, the money -- all of the money at dispute -- will
4 finally be held in a status quo, a time-out. It will finally
5 put this on a level playing field where justice can eventually
6 be done.

7 And when that happens, that will put this case on an
8 expedited road to settlement and resolution, and that road,
9 the -- and that expedited path to settlement and resolution
10 also ensures that the Presidential order is effectuated and
11 entirely resolved.

12 Judge Johnson, please issue these writs of attachment
13 and garnishment this night and put all of us on an expedited
14 path to settlement and full resolutions.

15 Thank you very much.

16 THE COURT: Ms. Colbath.

17 MS. COLBATH: Thank you, Your Honor. May it please
18 the Court.

19 THE COURT: Thank you.

20 MS. COLBATH: First, I think we've lost sight a
21 little bit about how harsh and extraordinary and drastic the
22 relief that Mr. Murphy seeks is under the law.

23 This is not deciding a motion to allow someone leave
24 to amend a complaint. This is some of the most drastic
25 relief, which requires -- it's statutory. It requires strict

1 compliance with the statute, and you have to have compelling
2 facts, which are absolutely absent here.

3 Mr. Murphy was required to show that the MineOne
4 parties have sought to hinder, delay, or defraud a creditor
5 and that MineOne is about to assign, remove, dispose, or
6 conceal its property. And here's the important part, "with
7 intent to defraud creditors," and there's absolutely nothing
8 in this record about any intent to defraud.

9 Actually, this transaction with CleanSpark was
10 publicly announced, was driven by the Presidential order, and
11 creates monies that will actually go -- we have outlined
12 penny-for-penny where the money will go, and nothing is going
13 sideways.

14 Mr. Murphy tries to -- now in his closing, he wants
15 the Court to recharacterize loans that the MineOne parties
16 received under very desperate circumstances that were actually
17 created by BCB.

18 We have a situation where there were tremendous cost
19 overruns, severe delays in getting the operation up and
20 running, and Mr. Murphy's client doesn't want to take any
21 responsibility for that even though their obligations under
22 the development, hosting, and service agreement, which spans
23 18 pages, were crystal clear.

24 They missed key deadlines. They can point fingers at
25 other vendors. They had the obligation to manage those

1 vendors, and it is BCB that agreed to the October 31, 2022,
2 date.

3 I think it's interesting and very compelling that
4 Mr. Murphy tries to make a lot of -- he calls them fake loans,
5 false loans.

6 Well, once Mr. Murphy -- as we heard, his clients
7 walked off the site, packed up their bags. No notice, no
8 default notice, no telephone call, no termination notice,
9 just -- my clients flew in from China and from New York to
10 meet with representative of BCB, and they were nowhere on the
11 site.

12 They just -- and then, once they left, within
13 48 hours they had filed a lawsuit. They had decided to file
14 that lawsuit some time earlier. It didn't get prepared in
15 24 hours.

16 So they didn't cross-examine Erick -- Dr. Rengifo --
17 about the necessity for the loans, how the proceeds were used.
18 And Dr. Rengifo testified that they were desperate to keep the
19 vendors on the site working so they had to go and get
20 nontraditional -- Bank of America, Wells Fargo wasn't going to
21 lend into a situation where the project manager, without
22 notice, had walked off the site and left MineOne to figure out
23 how to proceed. And, to add insult to injury, that property
24 manager, BCB, brought a lawsuit. And people don't lend into
25 situations where there are lawsuits.

1 So, as Dr. Rengifo described, this was catastrophic.
2 This was on the verge of a bankruptcy-type situation, and they
3 were successful in getting enough money to carry them until
4 the Antalpa loan ultimately came through.

5 This is BCB's burden on -- on attachment. I didn't
6 have to call any witnesses, and they -- they fall short of
7 meeting their burden.

8 There's nothing fraudulent about the CleanSpark
9 transaction. Arm's length, public company, announced, no --
10 no quibbling with the consideration, that it was fair and
11 adequate. There was no secrecy surrounding it. It's a public
12 company. The purchase and sale agreement was filed with
13 the SEC.

14 Again, the proceeds -- Mr. Murphy says that MineOne
15 won't suffer any damages, they lose nothing, and that's just
16 not true.

17 MineOne has current creditors. BCB is a contingent,
18 remote liability. You heard two varying scenarios today about
19 the underlying facts. The fact is the contract here provided
20 an October 31, 2022, date that didn't even come close. There
21 wasn't even substantial compliance; there wasn't any
22 compliance.

23 And so when Mr. Murphy says that my clients in
24 March of 2023 made a proposal for an adjustment to the
25 contract, that they wanted to sit down -- they flew in to

1 actually sit down and have a conversation -- that's because
2 BCB, as you also heard from Mr. Aldrich, who was there
3 onsite -- they were in way over their heads.

4 And -- and the clients that were going to host miners
5 at this facility -- the MineOne parties were face -- did pay a
6 \$200,000 penalty because they didn't have sufficient mining
7 capacity when they had agreed that they would have it.

8 There are -- there are vendors that are due; there
9 are lawyers; there are lenders and lenders get paid before
10 equity.

11 There are people -- in this situation it's -- it's
12 kind of -- what -- I scratch my head when I think of the
13 juxtaposition here because you've got BCB with both hands out,
14 claiming \$19 million for a phase that it didn't lift a pencil
15 for. BCB did not put in one dime in this project. And my
16 clients, who went to -- to third parties and were able to get
17 the money to make this a success, are now being accused of
18 like nefarious conduct when they were able to save the project
19 when -- when BCB, you know, just -- just walked to the
20 courthouse.

21 You heard Dr. Rengifo talk about BCB's breaches.
22 There were significant cost overruns; there were extreme
23 delays in delivery under the contract; there were permitting
24 obligations that were not satisfied.

25 And on the permitting, no one has suggested that BCB

1 should have listed itself as the owner on a permit. We all
2 know we hire agents. Their expert said that he had made
3 filings on behalf of clients before but you have the client
4 sign. And so that didn't happen here.

5 Mr. Murphy acknowledged knowing that CFIUS was
6 interested. He had received a report and an email -- the
7 report prepared by Microsoft -- and an email that CFIUS might
8 be interested. He had the obligation -- contractual, black
9 and white, under 6.2 of the contract -- to take action and he
10 didn't. They -- BCB walked off the job, filed its lawsuit,
11 and created the situation that we now find ourselves in.

12 I think it's also highly relevant that the agreement
13 that is being assigned to CleanSpark is an agreement that BCB
14 had absolutely nothing to do with. This agreement came into
15 being in April of 2024. It -- it -- the negotiations for it
16 started well after BCB walked off the site.

17 And the -- the contract actually is a very novel
18 contract. And I don't know, given the -- the accent that
19 Dr. Rengifo has, whether you really understood that this is a
20 whole new area that they contracted with Black Hills, that
21 is -- this is the first of its type. And BCB had absolutely
22 nothing to do with the creation, negotiation, and assignment
23 of that contract.

24 I want to address the bond because Mr. Murphy
25 minimizes the importance of the bond.

1 If money is tied up until 2025, 2026, there are
2 current creditors that are owed money that are not going to
3 stand by and wait until 2026 for Mr. Murphy -- for this matter
4 to be resolved. They're owed money; they want to be paid.
5 The property is being sold, and MineOne will receive lawsuits,
6 demands because it owes people now. It has -- it has people
7 knocking on its door now.

8 And so there will be damage, and this isn't where
9 there's a -- lose nothing. This is a situation where MineOne
10 almost loses no matter what happens. If writs are issued, we
11 lose because we don't have access to the cash that we need.

12 And at least 2.6 of that cash is absolutely required
13 for the MineOne parties to comply with the Presidential order.
14 Mr. Murphy keeps glossing over that, but the order requires a
15 dismantling of the site -- transformers, underground wires,
16 right down to foundations -- and the estimate, which was
17 provided to Mr. Murphy, is 2.6 million from someone who knows
18 the site. That's a requirement or the alternative is the
19 US Government will come in and confiscate the property without
20 any remuneration.

21 So there is huge damage and risk here to -- to the
22 MineOne parties. A bond is absolutely essential.

23 Mr. Murphy is asking, essentially, no bond when --
24 when there are significant damages that will befall the
25 MineOne parties, and he -- and he's brazen in his request to

1 you.

2 He's saying, basically, "Please give us this
3 extraordinary writ of attachment because it will give us a
4 litigation advantage. I promise you, Judge, this is going to
5 go on a fast track to settlement if you do this extraordinary
6 thing."

7 That -- that -- that is not the purpose of a writ of
8 attachment. It's to secure an ultimate judgment where someone
9 has shown a propensity to conceal, to secrete. And, here,
10 everything is absolutely totally aboveboard.

11 The other thing Mr. Murphy does in his reply papers
12 is he accuses me of scare tactics. I've kept the Court
13 totally informed about the CleanSpark transaction.
14 CleanSpark -- he keeps saying, "Oh, well, we were going to
15 close on June 5th." There was no closing. We agreed on a
16 hearing, and there was not going to be a closing until the
17 hearing.

18 The scare tactics are Mr. Murphy, in his reply brief
19 to the Court, quite astounding to me, threatening to go after
20 other parties for attachment if you don't give him this
21 attachment. He's going to make a lot more motions; he's
22 threatened to bring in other parties. And that's an abuse of
23 process. I mean, that's the scare tactic.

24 It's -- you're not entitled under the circumstances
25 here. The money is going to current creditors. The money is

1 needed to comply with the Presidential order, and tenders are
2 owed money now.

3 Mr. Murphy and BCB haven't come close to establishing
4 the type of fraudulent conduct, especially here, that this
5 transaction is driven by CFIUS' and the Presidential order.

6 And so, on behalf of the MineOne parties, we would
7 ask that the motion be denied in its entirety.

8 THE COURT: Thank you.

9 Well, we'll take five minutes and I'll announce what
10 I think we should do.

11 (A recess was taken from 7:11 p.m. to 7:15 p.m.)

12 THE COURT: This matter has come before the Court
13 upon the emergency motion for a protective order with
14 prejudgment writs of attachment and garnishment filed by the
15 plaintiff, BCB of Cheyenne, a limited liability company, which
16 does business as Bison Blockchain. We'll refer to them as
17 "BCB," as they have been referred to throughout this hearing.

18 The matter came to the Court's attention first on a
19 request -- an amended emergency motion for protection and
20 prejudgment writs of attachment and garnishment under our
21 Electronic Filing System No. 203, which was filed on June 3rd.

22 And having reviewed the filings and applicable law
23 and being otherwise fully advised, I find that the plaintiff,
24 although in a -- in the arguments and the evidence that is
25 before the Court, there's plenty of room for casting various

1 forms of fault and uncertainty around but enough here to
2 satisfy me that the statutory requirements for a prejudgment
3 writ of attachment and garnishment have been satisfied, and,
4 therefore, the motion will be granted by the Court.

5 On May 3rd of 2023 plaintiffs -- plaintiff filed the
6 instant lawsuit against the defendants, MineOne Wyoming Data
7 Center, a limited liability company; MineOne Partners, another
8 LLC; Terra Crypto, Incorporated; Bit Origin, Ltd.; and
9 SonicHash, LLC, following dismissal of a similar motion in
10 Wyoming Chancery Court. This lawsuit came to the Federal
11 Court.

12 The present pretrial matter arises from the
13 prospective sale -- the prospective sale, which is well on its
14 way and clothing -- closing is imminent -- of MineOne
15 defendants' North Range and Campstool properties and the
16 impending transfer of operations from MineOne to an outfit we
17 don't know much about called CleanSpark, Incorporated.

18 It was a forced sale in many senses, compelled by an
19 executive order from the President of the United States. And,
20 as we've heard today from Mr. -- the Notre Dame graduate and
21 the Denver law school graduate who works with -- and -- and
22 has been involved in other matters and -- involving CFIUS,
23 that it isn't the President that really makes these decisions
24 but, really, a committee of individuals representing nine
25 different agencies of the Federal Government, including

1 Department of Defense agencies as well as others that may be
2 called in from time to time to offer their expertise under
3 law.

4 But, ultimately, the President ordered divestiture of
5 this Bitcoin mining operation that was under development by
6 MineOne and its associates and was about to become fully
7 active, as explained here by Dr. -- I'll massacre his name --
8 Rengifo -- or Rengifo might be the way to pronounce it -- in
9 the business park located -- North Range Park, they called
10 it -- located approximately 1 mile from Warren Air Force Base,
11 where nuclear weapons are assembled and where ultimate control
12 and command of a -- one leg of the stool, nuclear defense
13 stool of the United States, exists with the 20th Air Force.

14 Three legs of the stool, of course, bombers,
15 land-based missiles, and sea-based, submarine-based nuclear
16 armament that has been relied upon since the commencement of
17 the Cold War for the defense of this country and is, of
18 course, a very sensitive issue in this nation.

19 The other area is called Campstool, located east of
20 Cheyenne in another business park, could be a sensitive area
21 because in that area outfits like major telecommunications
22 facilities are also -- also -- also located.

23 And the -- and the problem that ultimately was not in
24 my wheelhouse but was in the lane of -- occupied by the
25 President and by the committee was -- was that involving

1 investment in sensitive areas by foreign governments or those
2 that may be close to foreign governments on property located
3 within the United States.

4 Beyond that, I'm not an expert, and we've heard from
5 the self-proclaimed expert today. That objection, of course,
6 stands on the record. I think I heard enough that I'm
7 satisfied he has some familiarity that I certainly don't have
8 and found his testimony to be helpful.

9 This case has had -- in the emergency motion mode --
10 has had a plethora of difficult contacts by and between
11 Ms. Colbath and Mr. Murphy, who have both strived to -- very
12 hard -- to present the positions of their respective parties
13 before this Court as we have moved forward to either greater
14 success or lesser success, but those presentations have
15 matured, certainly, in the presentation that the Court has
16 heard today.

17 The plaintiff's amended emergency motion was filed on
18 June 17th, and the plaintiff responded to the defendants'
19 opposition on June 24th of 2024, and today is June 26th, the
20 date that we had set aside for hearing on this matter.

21 And, really, up to the 11th hour, the parties have
22 wished to submit additional matters. I think it would be
23 largely an endless exercise had it been permitted by the Court
24 to proceed on.

25 Under the Federal Rules of Civil Procedure, at the

1 commencement of and throughout an action, every remedy is
2 available that, under the law of the state -- or the forum --
3 is located, provides for seizing a person or properties to
4 secure satisfaction of a potential judgment. We look to
5 Rule -- Federal Rule of Civil Procedure 64(a) for support.

6 These remedies include attachment, garnishment, and
7 other corresponding or equivalent remedies. The right to
8 prejudgment remedy of attachment is purely statutory under
9 Wyoming law, and, therefore, strict compliance with applicable
10 statutes is important -- imperative.

11 The teaching there is from *NEPCO -- N-E-P-C-0 -- Fund II, a limited liability company, against DeFelice*, found
12 at 2013 Westlaw 12086095 at Note 1, an opinion of this Court
13 on June 4th of 2013, which looks to the general rule found in
14 7 CJS, Attachment No. 3 -- or Section 3.

16 The United States District Court addressing a motion
17 for prejudgment attachment in a diversity action generally
18 applies the law of the state when -- where the District Court
19 sits, and I don't want to go too much further in that regard
20 but to point out in Wyoming we look to Wyoming Statute
21 Annotated 1-15-201(a) as well as other pertinent statutes
22 which states, in pertinent parts, that before a prejudgment
23 writ of attachment may issue, the plaintiff must file an
24 affidavit -- and we have had nothing but affidavits filed in
25 support of the emergency motion that has been made -- by

1 Mr. Murphy, by other associates that we've heard today, and,
2 certainly, on the part of the defendant -- first, that the
3 defendant is indebted to the plaintiff, specifying the amount
4 of the indebtedness and the nature of the indebtedness.

5 That -- that first one has been a -- in my mind -- an
6 issue of thought and discussion for, really, several weeks.
7 The Wyoming statute just says "indebtedness." It doesn't
8 indicate the state. You know, we know there are all kinds of
9 indebtednesses. There are debts from promissory notes; there
10 are moral obligations; there are -- you go to Black's Law
11 Dictionary, and there are 30 or so different kinds of remarks
12 about indebtedness and liquidated, unliquidated.

13 Much of the indebtedness here is represented by the
14 over a hundred pages of single-spaced, typewritten product of
15 the plaintiff's expert in this matter, really demonstrates
16 a -- a -- a contingent sort of indebtedness, seeking
17 compensatory value that plaintiff contends it is entitled to
18 receive as a result of its agreements -- not specifically
19 spelled out but represented -- had those agreements fully
20 succeeded, and over a five-year term the plaintiff would have
21 received -- or expected to have received -- a modest 15- to
22 \$20 million portion of the profits with -- in their view --
23 with little obligation in connection to that.

24 They called it hosting but, certainly, not one that
25 involved great financial responsibility, in that MineOne would

1 have had the responsibility of paying Black Hills in this
2 case.

3 To that extent it's hard for me to put down in
4 dollars and cents what I think the plaintiff indebtedness
5 would be, and that amount undoubtedly will be something that
6 will be achieved -- if it is achieved at all -- with a
7 verdict, a jury verdict after the evidence is presented.

8 The attachment is not, in my view, sought to hinder
9 or delay or defraud any creditor. And my thought in that
10 regard is this case doesn't stop by granting a writ of
11 attachment or garnishment in this case but is one that leaves
12 remedies that are open to creditors that may be pursued and
13 even with -- I think there's even procedures by which, with
14 the posting of a bond, portions of any amount that might be
15 attached or garnished could be released to allow the creditor
16 to receive due compensation for work that was already
17 performed in this case and that is satisfactorily established
18 for purposes of the Court and to protect others. A bond could
19 be posted for that.

20 Third, that the payment of the indebtedness has not
21 been secured by a mortgage or lien upon real or personal
22 property in this state. Certainly not in this case and wasn't
23 even originally so secured.

24 Grounds for attachment. The defendant is not a
25 resident of this state. It's not. It is an organization, the

1 organizations that are -- answer to the State of Delaware and,
2 I assume, pay taxes in that state.

3 But the concern is that the members -- and it is the
4 members that are significant in any -- not for purposes of
5 jurisdiction but in any LLC -- are connected to China. The
6 actual connection to the government of China, a -- a nation
7 which values its government over any individual, certainly, or
8 any individual right is a matter of some concern by --
9 justifiably -- by the members of CFIUS.

10 The defendant stands in defiance of an officer or
11 conceals himself so that process cannot be served upon him,
12 that is not a situation that seems to apply here.

13 The fourth element is the defendant has assigned,
14 removed, disposed of, or concealed or is about to assign,
15 remove, dispose, or conceal any of his property and, of
16 course, with intent to defraud what Mr. Murphy contends is the
17 single-largest source of debt in this matter, and that is the
18 claim that exists with his client.

19 And that the defendant has departed or is about to
20 depart from the state to the injury of his creditors --
21 namely, BCB -- and the risk of the raise disappearing and
22 going overseas or to parts unknown and then followed by
23 bankruptcy proceedings followed in -- falls in an appropriate
24 location would not be unusual to see.

25 And that the defendant fraudulently contracted the

1 debt or incurred the obligation respecting which the action is
2 brought. Well, I think that's an issue best left to the trial
3 in this case.

4 The plaintiff does bear the burden of establishing
5 facts sufficient to justify the issuance of the writ under
6 Wyoming Statute 1-15-103(a)(v).

7 The plaintiff may also obtain a writ of a garnishment
8 subject to Section 1-15-101 through 1-15-108, and Wyoming
9 Statute Annotated, Section 1-15-401(a), states "A prejudgment
10 writ of a garnishment is available as a means of attachment of
11 tangible or intangible property other than earnings from
12 personal services of the defendant at any time after the
13 filing of a complaint and before judgment in cases in which
14 a writ of attachment is available under Wyoming
15 Statute 1-15-201."

16 And, here, plaintiff was informed about the
17 prospective sale of MineOne defendants' North Range and
18 Campstool properties and impending transfer of operation
19 contracts to CleanSpark, a third party who is not subject to
20 the underlying litigation.

21 Through this sale of property, plaintiff asserts that
22 MineOne defendants intended to abscond from Wyoming and the
23 United States with the purchase money, thus removing the
24 proceeds beyond the jurisdiction of this Court's reach and of
25 our ability to recover it or use the proceeds to satisfy any

1 obligation to BCB.

2 MineOne defendants confirm that the party entered
3 into a purchase and sale agreement on May 9th, 2024, to sell
4 its properties in Laramie County to CleanSpark. The sale was
5 prompted by the discussion between MineOne and the
6 United States Federal Government's Committee on Foreign
7 Investment in the United States, CFIUS.

8 In light of the objection to MineOne, a foreign
9 company operating facilities within -- or foreign -- a
10 national company -- native company or Delaware company that
11 all members -- or significant membership -- appears to be
12 foreign, operating facilities within 1 mile of Warren
13 Air Force Base led to the consequences that led to the forced
14 sale and dismantling of the North Range property.

15 Enough -- enough with that. I want to talk about
16 what we've listened to today.

17 I was impressed with the arguments that have been
18 made by Mr. Murphy about the nature of -- of what is happening
19 here, preserving the status quo.

20 I acknowledge -- as I have, I think, earlier -- that
21 the statutes are to be strictly followed. There is an
22 acknowledgement here of the Antalpa -- how do you pronounce
23 it? Antalpa? -- indebtedness in this matter, noting that the
24 Court has reviewed here -- although denied by the defense --
25 the extensive relationships between MineOne, ultimately, and

1 numerous organizations that are indebted and connected with --
2 I think there is substantial merit to the arguments and the
3 evidence that we have seen that this may be camouflaged equity
4 investments, so-called by Michael Murphy in his presentation.

5 Certainly, the Dow creditors and Cox creditors would
6 be of concern and deserve extensive scrutiny in that regard,
7 but, on its face, it appears that there is a significant
8 connection here.

9 The defendant in this matter has attempted to
10 indicate that BCB, whose role in this in Phase 1 -- using the
11 terms of the parties in that regard -- as the project manager,
12 was -- was interesting to the Court of how it was structured
13 and the surrounding comments about it because BCB was really
14 the cat's paw, deliberately selected in this matter by the
15 Chinese members for the purpose of presenting a local face on
16 this project and disguising, in a way, the responsibility of
17 the foreign members or making not -- it not as apparent after
18 these agreements and contracts were entered into.

19 Of course, BCB was eager and would have done
20 anything -- even stupidly giving up their one asset in this
21 matter, their winnings of the Black Hills lottery that they
22 had -- for the opportunity to put together a blockchain
23 program, mining program, that could bring great -- great
24 wealth with the electricity that would be provided for it.

25 So they played the role of the face of this

1 organization in Phase -- Phase 1. But MineOne wasn't willing
2 to give up control. They insisted that they controlled the
3 money and that the contracts with the people to build this
4 thing would be contracts that they had the financial control
5 over and were the signatories to, not BCB. A recipe for
6 disaster, it seems to me, looking back on the ill-fated
7 contractual relationships that existed by and between these
8 parties.

9 However, October 31 went past with a grinning
10 Halloween clown at the door of the North Range facility, not
11 done yet. November went past. And then MineOne woke up -- if
12 they weren't already awakened by the hundreds of emails that
13 were flying back and forth to one another -- and sent their
14 own expert out to take a look.

15 And he reported to them what they had been told, that
16 the -- Black Hills wasn't prepared to deliver the power even
17 if the construction was done, which it was not at North Range
18 and, of course, hadn't started at all at Campstool.
19 Engineering was still progressing on the project. But the pay
20 was under control of -- of the defendant in this matter.

21 The closing in this case will involve a sum of
22 \$15,529,165. I have seen today and heard through the
23 well-organized and prepared testimony of Michael Murphy --
24 certainly on one -- one-sided on this entire matter and feels
25 badly injured as a result of what has occurred -- that it

1 became apparent -- and it really has become -- it became
2 apparent to me, looking back on it in retrospect, that the
3 effort on the part of the defendant was to get BCB out of it,
4 out of their relationship, to get rid of them. And they had
5 hoped that -- offering them the paltry sum of \$45,000 -- that
6 BCB would sign the new agreement and disappear for all
7 practical purposes, not having any real connection in Phase 2.

8 And, admittedly, BCB went into this, no experience
9 hosting major mining projects, hoping to learn as they went,
10 not having put together the engineering and all of the
11 wherewithal that goes into developing one of the very largest
12 Bitcoin mining projects in the entire nation for MineOne, but
13 MineOne knew or certainly should have been aware of their
14 amateur status, essentially, very bright, very capable of
15 learning very quickly, top student at Notre Dame, a top
16 university in the nation, and with degrees and certificates to
17 prove that status.

18 The worry here of the defendant is that, with this
19 writ of attachment attaching the sum of 15 thousand
20 529 thousand 165 dollars, that CleanSpark will walk away.

21 I agree, generally, with Mr. Murphy in this matter
22 that you're not stopping the closing on the properties or the
23 investment of CleanSpark into development of Campstool. All
24 can go forward tomorrow as planned, subject to the -- subject
25 to the writ in this matter, which will allow this matter to

1 proceed to a jury hearing.

2 I wouldn't be surprised, not being, you know, very
3 naive, that CleanSpark might call up the parties and say,
4 "Hey, you better get busy settling this case so that we can --
5 everybody can get paid and -- what they don't wish to
6 accept -- and move on with their lives."

7 Because it appears to me that, any settlement of this
8 matter, no one is going to be happy. Each are going to take
9 serious losses, starting with the initial loss that occurred
10 when CFIUS took its action, which the head of Cheyenne LEADS,
11 as part of the Chamber of Commerce at the City of Cheyenne,
12 was aware of in November of 2022 and advised BCB, who, in
13 turn, was informed in a call by the defendant in this case "We
14 got it handled." Too bad they didn't. But we probably still
15 would be here in litigation.

16 I wrote down here "BCB walked." That seems to be a
17 big issue in the defense expert's testimony. Well, it's not
18 surprising considering, as I mentioned, what was happening at
19 that time, how they were being frozen out.

20 I could look at other affidavits that I've read in
21 connection with this matter. The expert that was sent out by
22 the defense had, pretty frankly, indicated that they needed --
23 that BCB needed to go -- to them, to their face -- early on in
24 January, talking to the individual from Arizona who signed the
25 affidavit that I read.

1 The matter of bond is -- is one that the Court
2 doesn't have a good answer for in this matter. I will order
3 a -- a bond for -- in a somewhat attempt to perhaps deal with
4 some of these creditor -- potential creditor losses, their
5 inability to file -- if they haven't -- inability to file a
6 bond.

7 I will order a -- a bond in the sum of a hundred
8 thousand dollars, conditioned, in this matter.

9 And finally, I'll ask you, Mr. Murphy, since you are
10 well motivated in this matter -- maybe too much so in some
11 sense of what we've seen here, as the parent of principals
12 involved in the BCB.

13 Nevertheless, candidly, I think, for the first time,
14 I heard admissions made of the naivete of BCB in connection
15 with this matter by you. I've heard you back away a little
16 bit of the -- on the fraud, the potential that certainly
17 exists here in this case, and the concerns of -- reflected by
18 the layers upon layers -- I thought that were very well
19 explained by Michael Murphy -- of the defense and its
20 financing in this matter and the camouflaged equity theories,
21 which had meaning to me and evidentiary strength in this case.

22 I will ask you, Mr. Murphy, to draft the writ that
23 I will sign and make sure that it is properly directed.

24 When will you be able to do that?

25 You're on mute. Sorry. Did we mute you?

1 MR. MURPHY: You did. But that's okay.

2 I'm going to ask Scott Murray, my partner, to do
3 that. I've got to run over -- there's this guy called
4 Bob Schuster who wants to meet --

5 THE COURT: I know Schuster. I've dealt with him in
6 the past.

7 MR. MURPHY: Don't you -- you and I both know that.

8 We'll do it. We'll do it.

9 THE COURT: All right.

10 MR. MURPHY: And we'll do it tomorrow and circulate
11 it to counsel, also.

12 THE COURT: Please do.

13 MS. COLBATH: Your Honor, what about the timing for
14 the bond?

15 THE COURT: It -- I think it's -- I don't see any
16 reason that it shouldn't be at the same time as we issue the
17 writ.

18 So they'll be busy tomorrow.

19 MS. COLBATH: So just so the record is clear, the
20 writ doesn't become effective until the bond is posted?

21 THE COURT: Bond posted -- bond will be posted. It
22 will be part of the writ.

23 MS. COLBATH: Thank you very much.

24 THE COURT: Yep.

25 Thank you, everybody, for your patience. It's now

1 7:30 in the evening. It must be close to 10:00 -- 9:30 on
2 your part, Paula.

3 MS. COLBATH: Yes, 10:00. And I'm already thinking
4 about a reconsideration motion on your bond amount,
5 Your Honor. But we'll give you a breather for a couple of
6 days.

7 THE COURT: All right. Well, I'll look forward
8 to it.

9 MS. COLBATH: I appreciate your time.

10 THE COURT: Thank you.

11 MR. GOTTLIEB: Thank you, Your Honor.

12 MR. MURPHY: Good night, Your Honor.

13 THE COURT: All right. We'll stand in recess.

14 (Proceedings adjourned at 7:55 p.m., June 26, 2024.)

15

16

17

18

19

20

21

22

23

24

25

1 C E R T I F I C A T E
2
3
4

5 I, MELANIE HUMPHREY-SONNTAG, Federal Official Court
6 Reporter for the United States District Court for the District
7 of Wyoming, a Registered Diplomate Reporter, Certified
8 Realtime Reporter, and Certified Realtime Captioner, do hereby
9 certify that I reported by realtime stenography the foregoing
10 proceedings contained herein on the aforementioned subject on
11 the date herein set forth and that the foregoing pages
12 constitute a full, true, and correct transcript.

13

14 Dated this 1st day of July, 2024.

15

16

17

18 /s/ Melanie Humphrey-Sonntag

19

20 MELANIE HUMPHREY-SONNTAG
RDR, CRR, CRC
21 Federal Official Court Reporter

22

23

24

25